CS/CS/SB 364 by **CJ, CU, Brandes**; (Similar to CS/CS/CS/H 0641) Computer Crimes

411272	PCS	S		RCS	AP		04/24 04:57 PM
812390	PCS:A	S		WD	AP, Galvano	btw L.299 - 300:	04/24 04:57 PM
893236	PCS:A	S	L	RCS	AP, Hays	Before L.38:	04/24 04:57 PM
688956	PCS:A	S	L	RCS	AP, Hays	Delete L.132 - 144:	04/24 04:57 PM
115286	PCS:A	S	L	RCS	AP, Hays	btw L.299 - 300:	04/24 04:57 PM

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

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

SB 510 by **Ring**; (Similar to CS/H 0351) Local Government Neighborhood Improvement Districts

207354	PCS	S		RCS	AP		04/24 04:34 PM

CS/SB 518 by **TR, Flores (CO-INTRODUCERS) Altman**; (Similar to CS/H 0225) Child Safety Devices in Motor Vehicles

790730	PCS	S		RCS	AP		04/24 05:14 PM
272442	PCS:A	S	L	RCS	AP, Gardiner	Delete L.16 - 39:	04/24 05:14 PM
553518	A	S		WD	AP, Gardiner	Delete L.16 - 34:	04/24 09:32 AM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CS/SB 1090 by **CF, Latvala (CO-INTRODUCERS) Sobel, Garcia**; (Similar to CS/CS/H 0979) Homelessness

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

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Negron, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, April 24, 2014
TIME: 9:00 —10:45 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (CS/CS/SB 364) is available:		
1	**CS/CS/SB 364** Criminal Justice / Communications, Energy, and Public Utilities / Brandes (Similar CS/CS/CS/H 641, Compare CS/CS/H 643, Link CS/S 366)	Computer Crimes; Providing that a person who willfully, knowingly, and without authorization accesses a computer network or electronic device, disrupts the ability to transmit data to or from a computer network or electronic device, damages a computer network or electronic device, or engages in the audio or video surveillance of an individual without the individual's authorization by accessing a computer network or electronic device commits an offense against the users of computer networks and electronic devices, etc. CU 02/04/2014 Fav/CS CJ 02/17/2014 Fav/CS ACJ 03/12/2014 Temporarily Postponed ACJ 03/19/2014 Fav/CS AP 04/24/2014 Fav/CS With subcommittee recommendation - Criminal and Civil Justice	Fav/CS Yeas 18 Nays 0
	A proposed committee substitute for the following bill (SB 444) is available:		
2	**SB 444** Galvano (Similar CS/CS/H 271, Compare H 1007, S 1214)	Workers' Compensation; Revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising rate formulas related to the determination of compensation for disability and death, etc. BI 01/14/2014 Favorable AGG 02/06/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 18 Nays 0
	A proposed committee substitute for the following bill (SB 510) is available:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 510** Ring (Similar CS/H 351)	Local Government Neighborhood Improvement Districts; Providing that an ordinance that creates a local government neighborhood improvement district may authorize the district to incur certain debts and pledge the funds, credit, property, and special assessment power of the district to pay such debts for the purpose of financing certain projects; providing conditions on the exercise of such power, etc. CA 01/14/2014 Favorable AFT 03/19/2014 Fav/CS AP 04/24/2014 Fav/CS	Fav/CS Yeas 15 Nays 1

With subcommittee recommendation - Finance and Tax

A proposed committee substitute for the following bill (CS/SB 518) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 518** Transportation / Flores (Similar CS/H 225, Compare S 454)	Child Safety Devices in Motor Vehicles; Revising child restraint requirements for children who are younger than a specified age; requiring an operator of a motor vehicle to use a separate carrier, integrated child seat, or child booster seat; providing an exception; subjecting a violation to penalties, etc. TR 03/06/2014 Fav/CS ATD 03/12/2014 Fav/CS AP 04/24/2014 Fav/CS	Fav/CS Yeas 17 Nays 1

With subcommittee recommendation - Transportation, Tourism, and Economic Development

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 550** Hukill (Similar H 427)	Traveling Across County Lines to Commit a Felony Offense; Defining the terms “county of residence” and “felony offense” for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Favorable CA 04/01/2014 Favorable ACJ 04/09/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS	Fav/CS Yeas 14 Nays 5

With subcommittee recommendation - Criminal and Civil Justice

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 712** Galvano (Identical H 847, Compare H 5601)	Taxes on Prepaid Calling Arrangements; Revising the definition of "prepaid calling arrangement" to clarify and update which services are included under that definition and subject to a sales tax, etc. CU 03/04/2014 Favorable AFT 04/02/2014 Favorable AP 04/22/2014 Not Considered AP 04/24/2014 Favorable With subcommittee recommendation - Finance and Tax	Favorable Yeas 15 Nays 0

A proposed committee substitute for the following bill (SB 734) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 734** Sobel (Similar CS/CS/H 511)	Cancer Control and Research; Revising the membership of the Florida Cancer Control and Research Advisory Council; requiring a statewide research plan; deleting the duties of the council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund, etc. HP 03/11/2014 Favorable AHS 04/02/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS With subcommittee recommendation - Health and Human Services	Fav/CS Yeas 16 Nays 0
8	**CS/CS/CS/SB 746** Community Affairs / Criminal Justice / Health Policy / Sobel (Similar H 959)	Health Care Clinic Act; Redefining the term "clinic"; exempting certain federally certified clinics from licensure under the act; providing that a clinic is subject to penalties if it engages physicians whose licenses have been suspended or revoked, etc. HP 03/11/2014 Fav/CS CJ 03/24/2014 Fav/CS CA 04/08/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Favorable	Favorable Yeas 18 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/CS/SB 798** Judiciary / Regulated Industries / Ring (Similar CS/CS/CS/H 807, Compare H 871, CS/S 1462)	Residential Properties; Providing that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license; authorizing an association to inspect and repair abandoned condominium units; providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; repealing provisions relating to the Community Association Living Study Council and its membership functions, etc. RI 03/06/2014 Fav/CS JU 04/01/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS	Fav/CS Yeas 17 Nays 0
10	**CS/SB 810** Regulated Industries / Galvano (Similar CS/CS/H 773, Compare CS/CS/CS/H 775, Link CS/CS/S 808)	Pugilistic Exhibitions; Revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter, etc. RI 03/13/2014 Fav/CS GO 03/26/2014 Favorable JU 04/08/2014 Favorable AP 04/22/2014 Not Considered AP 04/24/2014 Favorable	Favorable Yeas 19 Nays 0
11	**CS/SB 876** Transportation / Galvano (Identical CS/H 863, Compare CS/CS/CS/H 865, Link CS/S 1046)	Motor Vehicle Crash Reports; Requiring a statement to be completed and sworn to for each confidential crash report requested within a certain time period, etc. TR 03/13/2014 Fav/CS ATD 04/02/2014 Favorable AP 04/22/2014 Not Considered AP 04/24/2014 Favorable With subcommittee recommendation - Transportation, Tourism, and Economic Development	Favorable Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 886** Montford (Similar CS/H 337)	Florida Teachers Classroom Supply Assistance Program; Revising procedures for distributing program funds to classroom teachers, etc. ED 03/11/2014 Favorable AED 04/02/2014 Favorable AP 04/22/2014 Not Considered AP 04/24/2014 Favorable With subcommittee recommendation - Education	Favorable Yeas 17 Nays 0
13	**CS/CS/SB 972** Judiciary / Children, Families, and Elder Affairs / Galvano (Similar CS/CS/H 561)	Attorneys for Dependent Children with Special Needs; Requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney, etc. CF 03/18/2014 Fav/CS JU 04/01/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS	Fav/CS Yeas 16 Nays 0
14	**CS/CS/SB 1044** Agriculture / Communications, Energy, and Public Utilities / Simpson (Similar CS/H 7147, Compare H 4007)	Energy Policies; Removing a provision relating to representation in the Southern States Energy Compact; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; amending the purpose of the Florida Energy and Climate Protection Act; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations, etc. CU 03/11/2014 Fav/CS AG 03/31/2014 Fav/CS AP 04/22/2014 Not Considered AP 04/24/2014 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/SB 1090** Children, Families, and Elder Affairs / Latvala (Similar CS/CS/H 979)	Homelessness; Requiring the Department of Economic Opportunity to provide training and technical assistance to certain designated lead agencies of homeless assistance continuums of care; requiring the department to establish award levels for "Challenge Grants"; requiring the Florida Housing Finance Corporation to distribute to the department and the Department of Children and Families certain funds from the Local Government Housing Trust Fund for the purpose of providing support, training, and technical assistance to designated lead agencies of continuums of care, etc. CF 03/25/2014 Fav/CS AP 04/24/2014 Favorable	Favorable Yeas 18 Nays 0
16	**CS/SB 1206** Education / Montford (Similar CS/CS/CS/H 487)	Agricultural Industry Certifications; Requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on industry certification funding lists; defining the term "industry certification"; requiring the state board to adopt rules for implementing an industry certification process for farm occupations, etc. ED 03/18/2014 Temporarily Postponed ED 03/25/2014 Fav/CS AG 04/07/2014 Favorable AP 04/22/2014 Not Considered AP 04/24/2014 Favorable	Favorable Yeas 17 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/CS/SB 364 (411272)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; Communications, Energy, and Public Utilities Committee; and Senator Brandes
SUBJECT:	Computer Crimes
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Telotte/Walsh	Caldwell	CU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Fav/CS**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. PCS/CS/CS/SB 364 addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses.

Three crimes are added to "offenses against users of computer networks and electronic devices"[1] including:

- Audio and video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device without authorization[2];
- Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit;[3] and

[1] s. 815.06, F.S.
[2] Punishable as a third degree felony which could result in 5 years imprisonment and a $5,000 fine. ss. 775.082, 775.083, F.S.
[3] A second degree felony punishable by up to 15 years imprisonment and a $15,000 fine. ss. 775.082, 775.083, F.S.

- Disrupting a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.[4]

"Offenses against public utilities" are created in the bill and two additional crimes are created, including:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, a third degree felony; and
- Physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility, a second degree felony.

The Criminal Justice Impact Conference determined that the previous version of the bill (CS/CS/SB 364) would have an insignificant impact on the need for prison beds; the changes made in PCS/CS/CS/SB 364 do not appear to affect that determination.

II. Present Situation:

Offenses against intellectual property

Section 815.04, F.S., provides that a person commits an offense against intellectual property, punishable as a third degree felony, if he does one of the following:

- Willfully, knowingly, and without authorization modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- Willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., or is confidential as provided by law, residing or existing internal or external to a computer, computer system, or computer network.

If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the offense is elevated to a second degree felony.

Offenses against computer users

Section 815.06, F.S., provides that it is an offense against computer users, punishable as a third degree felony, to willfully, knowingly, and without authorization:

- Access or cause to be accessed any computer, computer system, or computer network; or
- Disrupt or deny or cause denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another; or
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network; or

[4] A first degree felony punishable by up to 30 years imprisonment and a fine of $10,000. ss. 775.082, 775.083, F.S.

- Destroy, injure, or damage any computer, computer system, or computer network; or
- Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony to commit an offense against computer users and additionally do any of the following:

- Damage a computer, computer equipment, a computer system, or a computer network and the monetary damage or loss incurred as a result of the violation is $5,000 or greater;
- Commit an offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupt or impair a governmental operation or public communication, transportation, or supply of water, gas, or other public service.

Committing an offense against computer users in any manner which endangers a human life is punishable as a first degree felony.

III. Effect of Proposed Changes:

Section 1 amends s. 815.02, F.S., to add a statement of legislative intent to recognize "The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime."

Section 2 expands s. 815.03, F.S., to define the term "electronic devices" and include the devices in the definition of a "computer network." A computer network is a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer system or electronic devices by physical or wireless telecommunication facilities.

An "electronic device" is defined by the bill as a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data. The bill includes cellular telephones, tablets, and other portable communications devices as examples of electronic devices. These changes allow for devices other than the standard computer to be considered capable of being used to commit an offense.

Section 3 amends s. 815.04, F.S., to include the term "electronic devices" in the existing definition of offenses against intellectual property. It also creates new offenses of introducing a computer contaminant and rendering data unavailable.

SB 366, a linked bill, amends the existing public records exemption regarding trade secrets in s. 815.04, F.S., and takes effect the same day as SB 364 if the bill is passed during the same legislative session and becomes law.

Section 4 amends s. 815.06, F.S., and renames these offenses "offenses against users of computer networks and electronic devices." It defines the term "user" to mean "a person with the authority to operate or maintain a computer network or electronic device."

The bill creates a new third degree felony where a person willfully, knowingly, and without authorization engages in audio or video surveillance of an individual without the individual's authorization by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Additionally, if a person commits an offense against users of computer networks and electronic devices and intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S., it is punishable as a second degree felony.

The bill also provides that it is a first degree felony for a person to commit an offense against users of a computer network and electronic devices and disrupt a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

As amended by the bill, revised s. 815.06, F.S., does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her employment and authorized security operations of a government or business.

Under s. 815.06, F.S., as amended by the bill, providers of the following services are exempt from liability:

- Interactive computer service;[5]
- Information service;[6]
- Communications services where the provider provides transmission, storage, or caching of electronic communications or messages of others;[7]

[5] As defined in 47 U.S.C. 230(f)(2): The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

[6] The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. 153(24).

[7] "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. s. 202.11, F.S.

- Other related telecommunications or commercial mobile radio service; or
- Content provided by another person.

Section 5 creates s. 815.061, F.S., to define offenses against public utilities.

The term "public utility" in this section means:
- Each public utility and electric utility as those terms are defined in s. 366.02, F.S.;
- Each water and wastewater utility as defined in s. 367.021, F.S.;
- Each natural gas transmission company as defined in s. 368.103, F.S.;
- Each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- Any separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

A person may not willfully, knowingly, and without authorization:
- Gain access to a computer network or other defined device owned, operated, or used by a public utility while knowing that such access is unauthorized, which is punishable as a third degree felony; or
- Physically tamper with, insert a computer contaminant into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which causes a disruption in any service delivered by a public utility, which is punishable as a second degree felony.

Technical and conforming changes are made throughout the bill.

Section 6 states that the bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/CS/SB 364 may provide better protection against economic loss to owners and users of computers, computer systems, and electronic devices as well as the providers of services related to these devices.

C. Government Sector Impact:

The Criminal Justice Impact Conference determined that PCS/CS/SB 364 would have an insignificant impact on the need for prison beds; the changes in PCS/CS/CS/SB 364 do not appear to affect that determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 815.06(2)(f), F.S., created in Section 4 of the bill, appears to be intended to prohibit a person from secretly surveilling another person by gaining unauthorized control of cameras or other features of a computer or electronic device that is not their own. However, if the "without authorization" element of the offense is not construed to apply to the act of "accessing any inherent feature or component of a computer," the provision could be interpreted to prevent private property owners from conducting surveillance on and around their property without first obtaining the authorization of any individual who is on the property. Although it is possible that authorization would be inferred from a person's presence in a location, this may not always be the case. For example, signs are posted in many retail establishments to notify persons that they are under surveillance while inside the store or even in the parking lot. Authorization may be inferred from the fact that the business owner gave notification of the surveillance and the customer chose to remain at the business. However, signs are not posted in every place where a person is under surveillance. For example, a homeowner who has a security camera to surveil his property may not post a sign to disclose that fact. If there is no notice to make a person who is on the property aware of the surveillance, it may be difficult to infer authorization simply by the person's presence on the property.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 815.02, 815.03, 815.04, and 815.06.

This bill creates section 815.061 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 19, 2014:
The committee substitute:

- Adds a new offense of "inserting a computer contaminant" to existing crimes relating to unauthorized activities concerning computers.
- Includes cellular telephones, tablets, and other portable communications devices as examples of electronic devices.
- Amends s. 815.06, F.S., to replace the bill's new definition of "person" with a definition of "user."
- Adds "authorized security operations of a government or business" to the exceptions created in the bill for activities that would otherwise violate s. 815.05, F.S.

CS/CS by Criminal Justice on February 17, 2014:
CS/CS/SB 364 amends s. 815.06, F.S., to exempt the providers of listed services from liability under any construction of the bill. It also requires a person's authorization, rather than knowledge, for audio or video surveillance of the person using the systems and devices listed in the bill.

CS by Communications, Energy, and Public Utilities on February 04, 2014:
The CS/SB 364 provides that the term "public utility" is not limited to the definition found in s. 366.02, F.S., but also includes additional types of utilities such as water and wastewater utilities, natural gas pipelines, natural gas storage, and supply facilities, or utilities under the direction of a governmental owned authority (Facilities that serve a public purpose and are necessary for the security and wellbeing of the public).

B. Amendments:

None.

812390

LEGISLATIVE ACTION

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

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 299 and 300
insert:
Section 6. Section 817.041, Florida Statutes, is created to read:
817.041 Electronic dissemination of commercial recordings; failure to disclose origin.—
(1) EFFECT ON OTHER REMEDIES.—
(a) This section is supplemental to those provisions of

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state and federal criminal and civil law which impose prohibitions or provide penalties, sanctions, or remedies against the same conduct prohibited by this section.

(b) This section does not:

1. Bar any cause of action that would otherwise be available.

2. Preclude any action that would otherwise be available.

3. Preclude the imposition of penalties or sanctions or the pursuit of remedies otherwise provided for by law.

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

(a) "Commercial recording or audiovisual work" means a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has made or intends to make available such recording or audiovisual work for sale, rental, or performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. The term does not include video games, depictions of video game play, or the streaming of video game activity. A recording or audiovisual work may be commercial, regardless of whether the person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination.

(b) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network, regardless of whether someone else has previously electronically disseminated the same commercial recording or audiovisual work.

(c) "Electronic mail address" means a destination, commonly

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expressed as a string of characters, consisting of a unique username or mailbox, commonly referred to as the "local part," and a reference to an Internet domain, commonly referred to as the "domain part," both of which are displayed, to which an electronic mail message can be sent or delivered.

(d) "Physical address" means a mailing address, including a zip code, which details the actual location of a person or entity. The term does not include a post office box or an electronic mail address.

(e) "Video game" means an electronic or computerized game that involves human interaction with a user interface to generate visual feedback on a video device.

(3) DISCLOSURE OF INFORMATION.—

(a) A person who owns or operates a website or online service dealing in substantial part in the electronic dissemination of commercial recordings or audiovisual works, directly or indirectly, to consumers in this state shall clearly and conspicuously disclose his or her true and correct name, physical address, and telephone number or electronic mail address, on his or her website or online service in a location readily accessible to a consumer using or visiting the website or online service.

(b) The following locations are deemed readily accessible for purposes of this section:

1. A landing or home web page or screen;

2. An "about" or "about us" web page or screen;

3. A "contact" or "contact us" web page or screen;

4. An "information" web page or screen; or

5. Another place on the website or online service commonly

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used to display identifying information to consumers.

(4) INJUNCTIVE RELIEF; ATTORNEY FEES.—

(a) An owner, assignee, authorized agent, or licensee of a commercial recording or audio visual work aggrieved by a violation of this section may bring a private cause of action to determine that an act or practice violates this section or that an act enjoins a practice in violation of this section. Upon motion of the party instituting the action, the court may make appropriate orders to compel compliance with this section.

(b) The prevailing party in a cause under this section is entitled to recover necessary expenses and reasonable attorney fees.

(5) APPLICABILITY.—This section does not impose liability on any provider of an interactive computer service, information service, or communications service, including, but not limited to, Internet service and hosting service for providing the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial radio service; or content provided by another person.

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

And the title is amended as follows:

Delete line 33

and insert:

utility; providing criminal penalties; creating s. 817.041, F.S.; providing applicability; defining terms; requiring owners and operators of specified websites and online services to disclose certain information; providing injunctive relief and attorney

812390

fees; providing an

893236

LEGISLATIVE ACTION

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

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Before line 38
insert:
Section 1. Subsection (1) of section 721.071, Florida Statutes, is amended to read:
721.071 Trade secrets.—
(1) If a developer or any other person filing material with the division pursuant to this chapter expects the division to keep the material confidential on grounds that the material

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constitutes a trade secret, as that term is defined in s. 812.081, the developer or other person shall file the material together with an affidavit of confidentiality. "Filed material" for purposes of this section shall mean material that is filed with the division with the expectation that the material will be kept confidential and that is accompanied by an affidavit of confidentiality. Filed material that is trade secret information includes, but is not limited to, service contracts relating to the operation of reservation systems and those items and matters described in s. 815.04(3) ~~s. 815.04(3)(a)~~.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

721.071, F.S.; conforming a cross-reference; amending s.

688956

LEGISLATIVE ACTION

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

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 132 - 144

and insert:

(3)~~(a)~~ Data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 which resides or exists internal or external to a computer, computer system, or computer network which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

688956

(4) ~~(b)~~ A person who ~~Whoever~~ willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that ~~which~~ is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(5) ~~(4)~~ (a) Except as otherwise provided in this subsection, an

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

And the title is amended as follows:

Delete line 12

and insert:

intellectual property; providing that a person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret or is confidential residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property; providing criminal penalties;

115286

LEGISLATIVE ACTION

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

The Committee on Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 299 and 300
insert:

Section 6. Paragraphs (a) and (c) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.

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322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
322.212(5)(a)	3rd	False application for driver's license or identification card.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than $200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.

509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a) ~~815.04(4)(a)~~	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.


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817.569(2)	3rd	Use of public record or public records information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.


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838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under

		the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in

			patrol vehicle with siren and lights activated.
63			
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
64			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
65			
	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
66			
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
67			
	327.35(2)(b)	3rd	Felony BUI.
68			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
69			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.

376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

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501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.


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806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b) ~~815.04(4)(b)~~	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor


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		vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers'

			licenses or identification cards.
99			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
100			
	843.19	3rd	Injure, disable, or kill police dog or horse.
101			
	860.15(3)	3rd	Overcharging for repairs and parts.
102			
	870.01(2)	3rd	Riot; inciting or encouraging.
103			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
104			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
105			


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893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by

			chapter 893.
111			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
112			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
113			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
114			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

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918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

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

And the title is amended as follows:

Delete line 33

and insert:

utility; providing criminal penalties; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart to changes made by the act; providing an

411272

576-02817-14

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

A bill to be entitled

An act relating to computer crimes; amending s. 815.02, F.S.; revising legislative findings; amending s. 815.03, F.S.; defining and redefining terms; amending s. 815.04, F.S.; providing that a person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property; providing criminal penalties; amending s. 815.06, F.S.; defining terms; providing that a person who willfully, knowingly, and without authorization accesses a computer, computer system, computer network, or electronic device, disrupts the ability to transmit data to or from a computer, computer system, computer network, or electronic device, damages a computer, computer system, computer network, or electronic device, or engages in the audio or video surveillance of an individual without the individual's authorization by accessing a computer, computer system, computer network, or electronic device commits an offense against the users of computer networks and electronic devices; providing exceptions; providing applicability; providing criminal penalties; creating s. 815.061, F.S.;

411272

576-02817-14

defining the term "public utility"; prohibiting a person from willfully, knowingly, and without authorization engaging in specified activities against a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility; providing criminal penalties; providing an effective date.

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

Section 1. Present subsection (4) of section 815.02, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

815.02 Legislative intent.—The Legislature finds and declares that:

(4) The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

Section 2. Section 815.03, Florida Statutes, is amended to read:

815.03 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means an internally programmed, automatic device that performs data processing.

(3) "Computer contaminant" means any set of computer

instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions, commonly called viruses or worms, which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp or interfere with the normal operation of the computer, computer system, or computer network.

(4) "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities ~~any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities~~.

(5) "Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(6) "Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

(7) "Computer system" means a device or collection of

devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

(8) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

(9) "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

(10) ~~(9)~~ "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(11) ~~(10)~~ "Intellectual property" means data, including programs.

(12) ~~(11)~~ "Property" means anything of value as defined in s. 812.012 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in ~~either~~ machine-readable or

human-readable form, and any other tangible or intangible item of value.

Section 3. Section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(1) A person who ~~Whoever~~ willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(2) A person who ~~Whoever~~ willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(3)(a) Data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 which resides or exists internal or external to a computer, computer system, or computer network which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who ~~Whoever~~ willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(4)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, ~~then~~ the person commits ~~offender is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 815.06, Florida Statutes, is amended to read:

815.06 Offenses against ~~computer~~ users of computer networks and electronic devices.—

(1) As used in this section, the term "user" means a person with the authority to operate or maintain a computer network or electronic device.

(2) A person commits an offense against users of computer networks or electronic devices if he or she ~~Whoever~~ willfully, knowingly, and without authorization:

(a) Accesses or causes to be accessed any computer, computer system, ~~or~~ computer network, or electronic device with the knowledge that such access is unauthorized;

(b) Disrupts or denies or causes the denial of the ability to transmit data ~~computer system services~~ to or from an authorized user of such computer system or computer network services, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

(c) Destroys, takes, injures, or damages equipment or

supplies used or intended to be used in a computer, computer system, ~~or~~ computer network, or electronic device;

(d) Destroys, injures, or damages any computer, computer system, ~~or~~ computer network, or electronic device; ~~or~~

(e) Introduces any computer contaminant into any computer, computer system, ~~or~~ computer network, or electronic device; or

(f) Engages in audio or video surveillance of an individual without that individual's authorization by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

This section does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her lawful employment and authorized security operations of a government or business, and nothing in this act may be construed to impose liability on a provider of an interactive computer service as defined in 47 U.S.C. s. 230(f)(2), an information service as defined in 47 U.S.C. s. 153(24), or communications services as defined in s. 202.11 if the provider provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person ~~commits an offense against computer users~~.

(3)~~(2)~~(a) Except as provided in paragraphs (b) and (c), a person who ~~whoever~~ violates subsection (2) ~~(1)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s.

775.083, or s. 775.084.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she ~~Whoever~~ violates subsection (2) ~~(1)~~ and:

1. Damages a computer, computer equipment or supplies, ~~computer supplies,~~ a computer system, or a computer network~~,~~ and the ~~monetary~~ damage or loss ~~incurred as a result of the violation~~ is at least $5,000 ~~or greater~~;

2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; ~~or~~

3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service; or

4. Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031~~,~~

~~commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(c) A person who ~~Whoever~~ violates subsection (2) ~~(1) and the violation endangers human life~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

1. Endangers human life; or

2. Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

(4) ~~(3)~~ A person who ~~Whoever~~ willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, ~~or~~ computer network, or electronic device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) ~~(4)~~ (a) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment or supplies, electronic device, ~~computer supplies,~~ or computer data may bring a civil action against a ~~any~~ person convicted under this section for compensatory damages.

(b) In an ~~any~~ action brought under this subsection, the court may award reasonable attorney ~~attorney's~~ fees to the prevailing party.

(6) ~~(5)~~ A ~~Any~~ computer, computer system, computer network, computer software, ~~or~~ computer data, or electronic device owned by a defendant which is used during the commission of a ~~any~~ violation of this section or a ~~any~~ computer or electronic device owned by the defendant which is used as a repository for the storage of software or data obtained in violation of this section is subject to forfeiture as provided under ss. 932.701-932.704.

(7) ~~(6)~~ This section does not apply to a ~~any~~ person who accesses his or her employer's computer system, computer network, computer program, ~~or~~ computer data, or electronic device when acting within the scope of his or her lawful employment.

(8) ~~(7)~~ For purposes of bringing a civil or criminal action under this section, a person who causes, by any means, the

access to a computer, computer system, ~~or~~ computer network, or electronic device in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, ~~or~~ computer network, or electronic device in both jurisdictions.

Section 5. Section 815.061, Florida Statutes, is created to read:

815.061 Offenses against public utilities.—

(1) As used in this section, the term "public utility" includes each public utility and electric utility as those terms are defined in s. 366.02; each utility as defined in s. 367.021; each natural gas transmission company as defined in s. 368.103; each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and any separate legal entity created under s. 163.01 and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

(2) A person may not willfully, knowingly, and without authorization:

(a) Gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

(b) Physically tamper with, insert a computer contaminant into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility.

(3)(a) A person who violates paragraph (2)(a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. This act shall take effect October 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 364
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; Communications, Energy, and Public Utilities Committee; and Senator Brandes
SUBJECT:	Computer Crimes
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Telotte/Walsh	Caldwell	CU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Fav/CS**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. CS/CS/CS/SB 364 addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses.

Three crimes are added to "offenses against users of computer networks and electronic devices"[1] including:

- Audio and video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device without authorization[2];
- Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit;[3] and

[1] s. 815.06, F.S.
[2] Punishable as a third degree felony which could result in 5 years imprisonment and a $5,000 fine. ss. 775.082, 775.083, F.S.
[3] A second degree felony punishable by up to 15 years imprisonment and a $15,000 fine. ss. 775.082, 775.083, F.S.

- Disrupting a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.[4]

"Offenses against public utilities" are created in the bill and two additional crimes are created, including:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, a third degree felony; and
- Physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility, a second degree felony.

The Criminal Justice Impact Conference determined that the previous version of the bill (CS/CS/SB 364) would have an insignificant impact on the need for prison beds; the changes made in CS/CS/CS/SB 364 do not appear to affect that determination.

II. Present Situation:

Offenses against intellectual property

Section 815.04, F.S., provides that a person commits an offense against intellectual property, punishable as a third degree felony, if he does one of the following:

- Willfully, knowingly, and without authorization modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- Willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., or is confidential as provided by law, residing or existing internal or external to a computer, computer system, or computer network.

If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the offense is elevated to a second degree felony.

Offenses against computer users

Section 815.06, F.S., provides that it is an offense against computer users, punishable as a third degree felony, to willfully, knowingly, and without authorization:

- Access or cause to be accessed any computer, computer system, or computer network; or
- Disrupt or deny or cause denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another; or
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network; or

[4] A first degree felony punishable by up to 30 years imprisonment and a fine of $10,000. ss. 775.082, 775.083, F.S.

- Destroy, injure, or damage any computer, computer system, or computer network; or
- Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony to commit an offense against computer users and additionally do any of the following:

- Damage a computer, computer equipment, a computer system, or a computer network and the monetary damage or loss incurred as a result of the violation is $5,000 or greater;
- Commit an offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupt or impair a governmental operation or public communication, transportation, or supply of water, gas, or other public service.

Committing an offense against computer users in any manner which endangers a human life is punishable as a first degree felony.

III. Effect of Proposed Changes:

Section 1 amends s. 815.02, F.S., to add a statement of legislative intent to recognize "The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime."

Section 2 expands s. 815.03, F.S., to define the term "electronic devices" and include the devices in the definition of a "computer network." A computer network is a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer system or electronic devices by physical or wireless telecommunication facilities.

An "electronic device" is defined by the bill as a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data. The bill includes cellular telephones, tablets, and other portable communications devices as examples of electronic devices. These changes allow for devices other than the standard computer to be considered capable of being used to commit an offense.

Section 3 amends s. 815.04, F.S., to include the term "electronic devices" in the existing definition of offenses against intellectual property. It also creates new offenses of introducing a computer contaminant and rendering data unavailable.

SB 366, a linked bill, amends the existing public records exemption regarding trade secrets in s. 815.04, F.S., and takes effect the same day as SB 364 if the bill is passed during the same legislative session and becomes law.

Section 4 amends s. 815.06, F.S., and renames these offenses "offenses against users of computer networks and electronic devices." It defines the term "user" to mean "a person with the authority to operate or maintain a computer network or electronic device."

The bill creates a new third degree felony where a person willfully, knowingly, and without authorization engages in audio or video surveillance of an individual without the individual's authorization by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Additionally, if a person commits an offense against users of computer networks and electronic devices and intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S., it is punishable as a second degree felony.

The bill also provides that it is a first degree felony for a person to commit an offense against users of a computer network and electronic devices and disrupt a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

As amended by the bill, revised s. 815.06, F.S., does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her employment and authorized security operations of a government or business.

Under s. 815.06, F.S., as amended by the bill, providers of the following services are exempt from liability:

- Interactive computer service;[5]
- Information service;[6]
- Communications services where the provider provides transmission, storage, or caching of electronic communications or messages of others;[7]

[5] As defined in 47 U.S.C. 230(f)(2): The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

[6] The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. 153(24).

[7] "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. s. 202.11, F.S.

- Other related telecommunications or commercial mobile radio service; or
- Content provided by another person.

Section 5 creates s. 815.061, F.S., to define offenses against public utilities.

The term "public utility" in this section means:
- Each public utility and electric utility as those terms are defined in s. 366.02, F.S.;
- Each water and wastewater utility as defined in s. 367.021, F.S.;
- Each natural gas transmission company as defined in s. 368.103, F.S.;
- Each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- Any separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

A person may not willfully, knowingly, and without authorization:
- Gain access to a computer network or other defined device owned, operated, or used by a public utility while knowing that such access is unauthorized, which is punishable as a third degree felony; or
- Physically tamper with, insert a computer contaminant into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which causes a disruption in any service delivered by a public utility, which is punishable as a second degree felony.

Technical and conforming changes are made throughout the bill.

Section 6 states that the bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 364 may provide better protection against economic loss to owners and users of computers, computer systems, and electronic devices as well as the providers of services related to these devices.

C. Government Sector Impact:

The Criminal Justice Impact Conference determined that CS/CS/SB 364 would have an insignificant impact on the need for prison beds; the changes in CS/CS/CS/SB 364 do not appear to affect that determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 815.06(2)(f), F.S., created in Section 5 of the bill, appears to be intended to prohibit a person from secretly surveilling another person by gaining unauthorized control of cameras or other features of a computer or electronic device that is not their own. However, if the "without authorization" element of the offense is not construed to apply to the act of "accessing any inherent feature or component of a computer," the provision could be interpreted to prevent private property owners from conducting surveillance on and around their property without first obtaining the authorization of any individual who is on the property. Although it is possible that authorization would be inferred from a person's presence in a location, this may not always be the case. For example, signs are posted in many retail establishments to notify persons that they are under surveillance while inside the store or even in the parking lot. Authorization may be inferred from the fact that the business owner gave notification of the surveillance and the customer chose to remain at the business. However, signs are not posted in every place where a person is under surveillance. For example, a homeowner who has a security camera to surveil his property may not post a sign to disclose that fact. If there is no notice to make a person who is on the property aware of the surveillance, it may be difficult to infer authorization simply by the person's presence on the property.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 815.02, 815.03, 815.04, and 815.06.

This bill creates section 815.061 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The committee substitute:

- Adds a new offense of "inserting a computer contaminant" to existing crimes relating to unauthorized activities concerning computers.
- Includes cellular telephones, tablets, and other portable communications devices as examples of electronic devices.
- Amends s. 815.06, F.S., to replace the bill's new definition of "person" with a definition of "user."
- Adds "authorized security operations of a government or business" to the exceptions created in the bill for activities that would otherwise violate s. 815.05, F.S.
- Makes technical and conforming changes.

CS/CS by Criminal Justice on February 17, 2014:
CS/CS/SB 364 amends s. 815.06, F.S., to exempt the providers of listed services from liability under any construction of the bill. It also requires a person's authorization, rather than knowledge, for audio or video surveillance of the person using the systems and devices listed in the bill.

CS by Communications, Energy, and Public Utilities on February 04, 2014:
The CS/SB 364 provides that the term "public utility" is not limited to the definition found in s. 366.02, F.S., but also includes additional types of utilities such as water and wastewater utilities, natural gas pipelines, natural gas storage, and supply facilities, or utilities under the direction of a governmental owned authority (Facilities that serve a public purpose and are necessary for the security and wellbeing of the public).

B. Amendments:

None.

By the Committees on Criminal Justice; and Communications, Energy, and Public Utilities; and Senator Brandes

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A bill to be entitled

An act relating to computer crimes; amending s. 815.02, F.S.; revising legislative findings; amending s. 815.03, F.S.; defining terms; amending s. 815.04, F.S.; providing that a person who willfully, knowingly, and without authorization modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer network or electronic device commits an offense against intellectual property; providing criminal penalties; amending s. 815.06, F.S.; defining terms; providing that a person who willfully, knowingly, and without authorization accesses a computer network or electronic device, disrupts the ability to transmit data to or from a computer network or electronic device, damages a computer network or electronic device, or engages in the audio or video surveillance of an individual without the individual's authorization by accessing a computer network or electronic device commits an offense against the users of computer networks and electronic devices; providing exceptions; providing applicability; providing criminal penalties; creating s. 815.061, F.S.; defining the term "public utility"; prohibiting a person from willfully, knowingly, and without authorization engaging in specified activities against a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility; providing criminal penalties; providing an

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effective date.

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

Section 1. Present subsection (4) of section 815.02, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

815.02 Legislative intent.—The Legislature finds and declares that:

(4) The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.

Section 2. Section 815.03, Florida Statutes, is amended to read:

815.03 Definitions.—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means an internally programmed, automatic device that performs data processing.

(3) "Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions, commonly called viruses or worms, which are self-replicating or self-propagating and which

are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(4) "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities ~~any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities~~.

(5) "Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(6) "Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

(7) "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

(8) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

(9) "Electronic device" means a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data.

(10) ~~(9)~~ "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(11) ~~(10)~~ "Intellectual property" means data, including programs.

(12) ~~(11)~~ "Property" means anything of value as defined in s. 812.012 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in ~~either~~ machine-readable or human-readable form, and any other tangible or intangible item of value.

Section 3. Section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(1) A person who ~~Whoever~~ willfully, knowingly, and without authorization modifies data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(2) A person who ~~Whoever~~ willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(3)(a) Data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 which resides or exists internal or external to a computer, computer system, or computer network which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who ~~Whoever~~ willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(4)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, ~~then~~ the person commits ~~offender is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 815.06, Florida Statutes, is amended to read:

815.06 Offenses against ~~computer~~ users of computer networks

and electronic devices.—

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

(a) An individual;

(b) A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such an entity; or

(c) An officer, employee, or agent of the state or a county, municipality, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof.

(2) A person commits an offense against users of computer networks or electronic devices if he ~~Whoever~~ willfully, knowingly, and without authorization:

(a) Accesses or causes to be accessed any computer, computer system, ~~or~~ computer network, or electronic device with knowledge that such access is unauthorized;

(b) Disrupts or denies or causes the denial of the ability to transmit data ~~computer system services~~ to or from an authorized user of such computer system or computer network services, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

(c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, ~~or~~ computer network, or electronic device;

(d) Destroys, injures, or damages any computer, computer system, ~~or~~ computer network, or electronic device; ~~or~~

(e) Introduces any computer contaminant into any computer,

computer system, ~~or~~ computer network, or electronic device; or

(f) Engages in audio or video surveillance of an individual without that individual's authorization by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

This section does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her lawful employment, and nothing in this act may be construed to impose liability on a provider of an interactive computer service as defined in 47 U.S.C. 230(f)(2), an information service as defined in 47 U.S.C. 153(24), or communications services as defined in s. 202.11 if the provider provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person ~~commits an offense against computer users~~.

(3)~~(2)~~(a) Except as provided in paragraphs (b) and (c), a person who ~~whoever~~ violates subsection (2) ~~(1)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she ~~Whoever~~ violates subsection (2) ~~(1)~~ and:

1. Damages a computer, computer equipment or supplies, ~~computer supplies,~~ a computer system, or a computer network~~,~~ and

the ~~monetary~~ damage or loss ~~incurred as a result of the violation~~ is at least $5,000 ~~or greater~~;

2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; ~~or~~

3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service; or

4. Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031~~,~~

~~commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(c) A person who ~~Whoever~~ violates subsection (2) ~~(1) and the violation endangers human life~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation:

1. Endangers human life; or

2. Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

(4)~~(3)~~ A person who ~~Whoever~~ willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, ~~or~~ computer network, or electronic device commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5)~~(4)~~(a) In addition to any other civil remedy available,

the owner or lessee of the computer, computer system, computer network, computer program, computer equipment or supplies, electronic device, ~~computer supplies,~~ or computer data may bring a civil action against a ~~any~~ person convicted under this section for compensatory damages.

(b) In an ~~any~~ action brought under this subsection, the court may award reasonable attorney ~~attorney's~~ fees to the prevailing party.

(6)~~(5)~~ A ~~Any~~ computer, computer system, computer network, computer software, ~~or~~ computer data, or electronic device owned by a defendant which is used during the commission of a ~~any~~ violation of this section or a ~~any~~ computer or electronic device owned by the defendant which is used as a repository for the storage of software or data obtained in violation of this section is subject to forfeiture as provided under ss. 932.701-932.704.

(7)~~(6)~~ This section does not apply to a ~~any~~ person who accesses his or her employer's computer system, computer network, computer program, ~~or~~ computer data, or electronic device when acting within the scope of his or her lawful employment.

(8)~~(7)~~ For purposes of bringing a civil or criminal action under this section, a person who causes, by any means, the access to a computer, computer system, ~~or~~ computer network, or electronic device in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, ~~or~~ computer network, or electronic device in both jurisdictions.

Section 5. Section 815.061, Florida Statutes, is created to

read:

815.061 Offenses against public utilities.—

(1) As used in this section, the term "public utility" includes each public utility and electric utility as those terms are defined in s. 366.02; each utility as defined in s. 367.021; each natural gas transmission company as defined in s. 368.103; each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and any separate legal entity created under s. 163.01 and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

(2) A person may not willfully, knowingly, and without authorization:

(a) Gain access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.

(b) Physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility.

(3)(a) A person who violates paragraph (2)(a) commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. This act shall take effect October 1, 2014.

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 19, 2014

I respectfully request that **Senate Bill # 364**, relating to Computer Crimes, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Committee on Appropriations

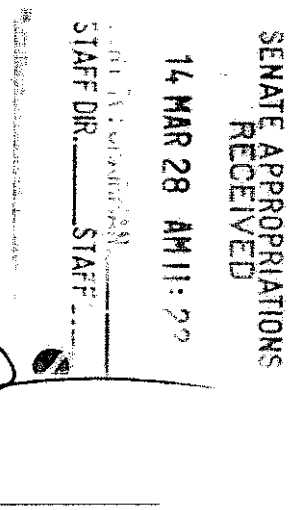
Subject: Committee Agenda Request

Date: March 28, 2014

I respectfully request that **Senate Bill #364**, relating to Computer Crimes, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.



Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 444 (314816)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Galvano
SUBJECT:	Workers' Compensation
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 444 amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's Workers' Compensation Law as follows:

- Extends the number of days for an employer to provide requested records to the Department of Financial Services (DFS) from five to 10 days or be subject to a SWO.
- Authorizes the DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment and agrees to pay the remainder of the penalty in periodic installments or to pay the remaining penalty in full.
- Authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Repeals a required employer reporting requirement for a probationary period.
- Credits the initial payment of the premium made by the employer to secure coverage against the assessed penalty for not having coverage for an employer that has not previously been issued a SWO. The bill provides a minimum $1,000 penalty if the calculated penalty, after the credit is applied, is less than $1,000.
- Revises the penalty for failing to have required coverage. The bill reduces the look-back period for failure to comply with coverage requirements from three to two years and increases the penalty multiplier from 1.5 to two times the amount of unpaid premiums.

The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67 percent or the current 66 2/3 percent of the employee's average weekly wage; this change has no fiscal impact because it reflects current procedures used by carriers. The remaining provisions of the bill are expected to have a negligible fiscal impact.

The bill also changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

II. Present Situation:

Coverage Requirements

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., including the enforcement of coverage requirements. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[1]

An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.[2] An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.[3] No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.[4] Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.[5]

An employer may secure the workers' compensation coverage for his or her employees by entering into an employee leasing arrangement. In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer under which all or most of the client's workforce is employed by the leasing company and leased to the client company.[6] The employer must notify the employee leasing company of the names of covered employees.

[1] Section 440.38, F.S.
[2] Section 440.02(17)(b)2, F.S.
[3] *Id.*
[4] Section 440.05, F.S.
[5] *Id.*
[6] The Board of Employee Leasing Companies within the Department of Business and Professional Regulation license and regulate employee leasing companies pursuant to Part XI of chapter 468, F.S. Temporary help arrangements are excluded from the definition of employee leasing. (s. 468.520, F.S.)

Enforcement of Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.[7] The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding three-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide three years of business records. Some employers are often unable to quickly provide all records required to calculate the penalty. The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty.

A SWO is issued for the following violations: failure to obtain workers' compensation insurance, materially understating or concealing payroll, materially misrepresenting or concealing employee duties to avoid paying the proper premium, materially concealing information pertinent to the calculation of an experience modification factor, and failure to produce business records within five days of receipt of a written request from the DFS.[8] As a condition of release from a SWO, the DFS may require an employer to file periodic reports, for up to two years, to document the employer's continued compliance with coverage requirements.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least eight days of work due to a covered (compensable) injury. Indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.[9] Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW), up to the maximum weekly benefit established by law.[10]

In a 2013 case, an employer had calculated the compensation rate for a claimant by multiplying the AWW by .66667 (or $529.48). The Judge of Compensation Claims (JCC) calculated the compensation rate by multiplying the AWW by .6667 (or $529.50). On appeal, the First District Court of Appeal held that "[b]ecause the [e]mployer did not pay less than the compensation required by statute, the JCC erred in ordering the employer to pay more []"than 66 2/3 percent of the AWW, namely $529.47.[11]

[7] Section 440.107, F.S.
[8] *Id.*
[9] Section 440.12(1), F.S.
[10] Section 440.15, F.S.
[11] *Escambia County School District v. Vickery-Orso*, 109 So. 3d 1242, 1244 (Fla 1st DCA 2013).

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with pre-existing permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is maintained by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

The assessment rate is calculated by the DFS using the previous three calendar years of SDTF expenditures. Currently, the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The assessment rate is capped at 4.52 percent of net premiums.

III. Effect of Proposed Changes:

Enforcement of Coverage Requirements

The bill allows employers an additional five business days (ten days total) to produce records requested by the DFS before the issuance of a stop-work order.

The bill revises penalty for failure to comply with coverage requirements by increasing the penalty multiplier from 1.5 to two times the unpaid premiums and reducing the penalty period from the preceding three years to the prior two years.

The DFS is authorized to issue a conditional release of a SWO if the employer has obtained coverage, paid a $1,000 down payment and agreed to either pay the remaining penalty or enter into a periodic payment agreement. The bill authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enters into a payment agreement within 28 days after service of the SWO upon the employer. The bill repeals a required employer reporting requirement for a probationary period.

The bill provides for a credit of the initial payment of workers' compensation insurance premium against the full amount of the penalty for employers who have not been previously issued a SWO. The employer is required to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. If an employer secures coverage through an employee leasing company, the bill requires the employer to provide the DFS with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The bill provides for assessment of a minimum

$1,000 penalty against an employer if the calculated penalty, after the credit is applied, is less than $1,000.

Calculation of Compensation

The bill addresses the holdings in *Escambia County School District v. Vickery-Orso, supra,* by authorizing employers/carriers to pay compensation to injured employees of "66 2/3 or 66.67 percent" of the AWW. The latter percentage produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur costs associated with modifying their payment procedures.

Workers' Compensation Special Disability Trust Fund

The bill changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund. The assessment rate cap is changed from 4.52 percent to 2.50 percent.

The bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 444 allows employers five additional days to produce records requested by the DFS before the issuance of a SWO.

The bill revises the employer penalty for not having coverage by reducing the look-back period from the preceding three years to two years for purposes of calculating the

penalty; however, it increases the penalty multiplier from 1.5 to two times the amount an employer would have paid in premium.

If an employer has not been previously issued a SWO, the bill provides for a credit of the initial payment of premium made to secure coverage against the assessed penalty, thereby decreasing the amount of the penalty to be paid by the employer.

The codification of the 66.67 percent compensation rate reflects current carrier claims payment procedures; so, there is no impact.[12]

The DFS states the changing of the assessment calculation will benefit the private sector by allowing the department to draw down the SDTF fund balance to pay approved older reimbursement requests that are awaiting payment without increasing the SDTF assessment rate. Reducing the cap from 4.52 percent to 2.5 percent lowers the maximum assessment for employers.

C. Government Sector Impact:

According to the DFS, revising the coverage non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.[13]

Since the program is closed and the assessment rate is lower than 2.5 percent, reducing the assessment cap from 4.52 percent to 2.5 percent has no impact to the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.107, 440.15, and 440.16.

[12] Department of Financial Services, *Senate Bill 444 Fiscal Analysis* (December 6, 2013) (on file with the Senate Banking and Insurance Committee).
[13] *Id.*

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on February 6, 2014:

- Changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund to be calculated by the DFS based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the trust fund.
- Changes the assessment rate cap is from 4.52 percent to 2.50 percent.

B. Amendments:

None.

892866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 43
and insert:
worksite. Information related to an employer's stop-work order shall be made available on the division's website and updated daily. The information shall remain on the website for at least 5 years. The order shall remain in effect until the department

892866

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 6
and insert:
requirements; providing for stop-work order information to be available on the Division of Workers' Compensation website; revising requirements for the release of

818218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete lines 87 - 94
and insert:
credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation by a representative from the employee leasing company of the dollar or percentage amount attributable to the initial estimated

818218

workers' compensation expense for leased employees and proof of payment to

319214

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2014	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete lines 228 - 279
and insert:
provided in s. 440.51. Payments of assessments shall be made by each carrier, self-insurer, and self-insured employer to the department for the Special Disability Trust Fund pursuant to department rule establishing such method of payment.

2. The department shall estimate annually in advance the amount necessary for the administration of this subsection and

the maintenance of this fund pursuant to this paragraph ~~and shall make such assessment in the manner hereinafter provided~~. By July 1 of each year, the department shall calculate the assessment rate, which shall be based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, the sum of the anticipated disbursements and expenses of the Special Disability Trust Fund for the next calendar year, and the expected fund balance for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year. Such amount shall be prorated among insurance companies writing workers' compensation insurance in the state, the self-insurers, and self-insured employers.

~~2. The annual assessment shall be calculated to produce during the next calendar year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 of the current calendar year which is in excess of $100,000, is equal to the average of:~~

~~a. The sum of disbursements from the fund during the immediate past 3 calendar years, and~~

~~b. Two times the disbursements of the most recent calendar year.~~

~~c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate~~

~~filings, whether regular or amended, approved by the office which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.~~

~~Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.~~

3. A reimbursement request that has been approved but remains unpaid as of June 30, 2014, shall be paid by October 31, 2014 ~~The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums~~. ~~Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.~~

4. The Chief Financial Officer is authorized to receive and


314816

576-01686-14

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

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; amending s. 440.49, F.S.; revising provisions relating to the assessment rate of the Special Disability Trust Fund; reducing the assessment rate limitation; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 10 ~~5~~ business days after receipt of the


314816

576-01686-14

written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after

service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department shall allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before the department applies the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of

payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits

provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. ~~No~~ Compensation is not ~~shall be~~ payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary,

wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 or 16.67 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 or 33.33 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. ~~In no case shall~~ A surviving spouse's acceptance of a lump-sum payment does not affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 or 33.33 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) If ~~Where~~, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

Section 4. Paragraphs (b) and (c) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals as defined in s. 628.6011, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund pursuant to department rule.

2. The department shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund pursuant to this paragraph ~~and shall make such assessment in the manner hereinafter provided~~. By July 1 of each year, the department shall calculate the assessment rate, which shall be based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the Special Disability Trust Fund for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.

~~2. The annual assessment shall be calculated to produce during the next calendar year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 of the current calendar year which is in excess of $100,000, is equal to the average of:~~

~~a. The sum of disbursements from the fund during the immediate past 3 calendar years, and~~

~~b. Two times the disbursements of the most recent calendar year.~~

~~c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate~~

~~filings, whether regular or amended, approved by the office which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.~~

~~Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.~~

3. ~~The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.~~

~~4.~~ The Chief Financial Officer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate assessed may ~~shall~~ not exceed 2.5 ~~4.52~~ percent.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 444
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Galvano
SUBJECT:	Workers' Compensation
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Betta	DeLoach	AGG	**Fav/CS**
3.	Betta/Johnson	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 444 amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's Workers' Compensation Law as follows:

- Extends the number of days for an employer to provide requested records to the Department of Financial Services (DFS) from five to 10 days or be subject to a SWO.
- Authorizes the DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment and agrees to pay the remainder of the penalty in periodic installments or to pay the remaining penalty in full.
- Authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enter into a payment agreement within 28 days after service of the SWO upon the employer.
- Requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information will remain on the website for at least five years.
- Repeals a required employer-reporting requirement for a probationary period.
- Credits the initial payment of the premium made by the employer to secure coverage against the assessed penalty for not having coverage for an employer that has not previously been issued a SWO. The bill provides a minimum $1,000 penalty if the calculated penalty, after the credit is applied, is less than $1,000.

- Revises the penalty for failing to have required coverage. The bill reduces the look-back period for failure to comply with coverage requirements from three to two years and increases the penalty multiplier from 1.5 to two times the amount of unpaid premiums.

The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67 percent or the current 66 2/3 percent of the employee's average weekly wage; this change has no fiscal impact because it reflects current procedures used by carriers. The remaining provisions of the bill are expected to have a negligible fiscal impact.

The bill also revises the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance, disbursements, and expenses of the trust fund. The bill reduces the assessment rate cap from 4.52 percent to 2.50 percent.

II. Present Situation:

Coverage Requirements

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., including the enforcement of coverage requirements. Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or qualifying as a self-insurer.[1]

An employer in a non-construction industry employing four or more part- or full-time employees must secure insurance.[2] An employer engaged in the construction industry must secure workers' compensation insurance if it employs one or more part- or full-time employees.[3] No more than three officers of a corporation or members of a limited liability company who are engaged in the construction industry may elect to be exempt from this requirement, if certain conditions are met.[4] Corporate officers and members of a non-construction LLC can elect to be exempt from workers' compensation coverage requirements.[5]

An employer may secure the workers' compensation coverage for his or her employees by entering into an employee leasing arrangement. In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer under which all or most of the client's workforce is employed by the leasing company and leased to the client company.[6] The employer must notify the employee leasing company of the names of covered employees.

[1] Section 440.38, F.S.
[2] Section 440.02(17)(b)2, F.S.
[3] *Id.*
[4] Section 440.05, F.S.
[5] *Id.*
[6] The Board of Employee Leasing Companies within the Department of Business and Professional Regulation license and regulate employee leasing companies pursuant to Part XI of chapter 468, F.S. Temporary help arrangements are excluded from the definition of employee leasing. (s. 468.520, F.S.)

Enforcement of Coverage Requirements

If an employer fails to comply with workers' compensation coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of determining noncompliance.[7] The SWO requires the employer to cease all business operations. The SWO remains in effect until the employer secures appropriate coverage and the DFS issues an order releasing the SWO (for employers that have paid the assessed penalty); or an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding three-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide three years of business records. Some employers are often unable to provide all records required to calculate the penalty in an expedited manner. The SWO remains in effect and the employer cannot conduct business until the DFS has calculated the penalty.

A SWO is issued for the following violations: failure to obtain workers' compensation insurance, materially understating or concealing payroll, materially misrepresenting or concealing employee duties to avoid paying the proper premium, materially concealing information pertinent to the calculation of an experience modification factor, and failure to produce business records within five days of receipt of a written request from the DFS.[8] As a condition of release from a SWO, the DFS may require an employer to file periodic reports, for up to two years, to document the employer's continued compliance with coverage requirements.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least eight days of work due to a covered (compensable) injury. Indemnity benefits are payable retroactively from the first day of disability (to include compensation for the first seven days missed) to employees who miss more than 21 days of work due to a compensable injury.[9] Such benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW), up to the maximum weekly benefit established by law.[10]

In a 2013 case, an employer had calculated the compensation rate for a claimant by multiplying the AWW by .66667 (or $529.48). The Judge of Compensation Claims (JCC) calculated the compensation rate by multiplying the AWW by .6667 (or $529.50). On appeal, the First District Court of Appeal held that "[b]ecause the [e]mployer did not pay less than the compensation required by statute, the JCC erred in ordering the employer to pay more []"than 66 2/3 percent of the AWW, namely $529.47.[11]

[7] Section 440.107, F.S.
[8] *Id.*
[9] Section 440.12(1), F.S.
[10] Section 440.15, F.S.
[11] *Escambia County School District v. Vickery-Orso*, 109 So. 3d 1242, 1244 (Fla 1st DCA 2013).

Workers' Compensation Special Disability Trust Fund

The Florida Special Disability Trust Fund (SDTF) was established to encourage the employment of workers with pre-existing permanent physical impairments. The SDTF reimburses employers (or their carriers) for the excess in workers' compensation benefits provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As part of the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements, as well as audits and processes reimbursement requests. Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. The SDTF is maintained by annual assessments on insurers providing compensation insurance coverage. Claims with an accident date before 1998 are still eligible to seek reimbursements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

The assessment rate is calculated by the DFS using the previous three calendar years of SDTF expenditures. Currently, the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The assessment rate is capped at 4.52 percent of net premiums.

III. Effect of Proposed Changes:

Enforcement of Coverage Requirements

The bill allows employers an additional five business days (ten days total) to produce records requested by the DFS before the issuance of a stop-work order.

The bill revises penalty for failure to comply with coverage requirements by increasing the penalty multiplier from 1.5 to two times the unpaid premiums and reducing the penalty period from the preceding three years to the prior two years.

The DFS is authorized to issue a conditional release of a SWO if the employer has obtained coverage, paid a $1,000 down payment and agreed to either pay the remaining penalty or enter into a periodic payment agreement. The bill authorizes an immediate reinstatement of the SWO if the employer does not pay the full penalty or enters into a payment agreement within 28 days after service of the SWO upon the employer. The bill repeals a required employer reporting requirement for a probationary period.

The bill provides for a credit of the initial payment of workers' compensation insurance premium against the full amount of the penalty for employers who have not been previously issued a SWO. The employer is required to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. If an employer secures coverage through an employee leasing company, the bill requires the employer to provide the DFS with a written confirmation by a representative from the employee leasing company of the dollar amount or percentage amount attributable to the initial estimated workers' compensation expense for leased employees and proof of payment to the employee leasing company. The bill

provides for assessment of a minimum $1,000 penalty against an employer if the calculated penalty, after the credit is applied, is less than $1,000.

The bill requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information must remain on the website for at least five years.

Calculation of Compensation

The bill addresses the holdings in *Escambia County School District v. Vickery-Orso, supra,* by authorizing employers/carriers to pay compensation to injured employees of "66 2/3 or 66.67 percent" of the AWW. The latter percentage produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur costs associated with modifying their payment procedures.

Workers' Compensation Special Disability Trust Fund

The bill changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund and requires it be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, the sum of the anticipated disbursements and expenses for the next calendar year, and the expected fund balance of the trust fund for the next calendar year. The assessment rate cap is reduced from 4.52 percent to 2.50 percent. The bill requires a reimbursement request that has been approved but remains unpaid by the DFS as of June 30, 2014, to be paid by October 31, 2014.

The bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 444 allows employers five additional days to produce records requested by the DFS before the issuance of a SWO.

The bill revises the employer penalty for not having coverage by reducing the look-back period from the preceding three years to two years for purposes of calculating the penalty; however, it increases the penalty multiplier from 1.5 to two times the amount an employer would have paid in premium.

If an employer has not been previously issued a SWO, the bill provides for a credit of the initial payment of premium made to secure coverage against the assessed penalty, thereby decreasing the amount of the penalty to be paid by the employer.

The codification of the 66.67 percent compensation rate reflects current carrier claims payment procedures; so, there is no impact.[12]

The DFS states the changing of the assessment calculation will benefit the private sector by allowing the department to draw down the SDTF fund balance to pay approved older reimbursement requests that are awaiting payment without increasing the SDTF assessment rate. Reducing the cap from 4.52 percent to 2.5 percent lowers the maximum assessment for employers.

C. Government Sector Impact:

According to the DFS, revising the coverage non-compliance penalty will have a negligible impact on the Workers' Compensation Administration Trust Fund.[13]

Since the program is closed and the assessment rate is lower than 2.5 percent, reducing the assessment cap from 4.52 percent to 2.5 percent has no impact to the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.107, 440.15, 440.16, and 440.49.

[12] Department of Financial Services, *Senate Bill 444 Fiscal Analysis* (December 6, 2013) (on file with the Senate Banking and Insurance Committee).
[13] *Id.*

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:

- Changes the assessment calculation for the Workers' Compensation Special Disability Trust Fund to be calculated by the DFS based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance, disbursements, and expenses of the trust fund.
- Lowers the trust fund assessment rate cap from 4.52 percent to 2.50 percent.
- Requires the DFS to maintain information related to an employer's SWO on the Division of Workers' Compensation website. Such information must remain on the website for at least five years.
- Provides technical, clarifying changes.

B. Amendments:

None.

By Senator Galvano

26-00355A-14 2014444__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 10 ~~5~~ business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The

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order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of~~

~~s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department shall allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before the department applies the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered

into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, are amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. ~~No~~ Compensation is not ~~shall be~~ payable under this

section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount

determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 or 16.67 percent on account of the child or children.

However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 or 33.33 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. ~~In no case shall~~ A surviving spouse's acceptance of a lump-sum payment does not affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 or 33.33 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) If ~~Where~~, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person

or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

February 6, 2014

Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 444, Workers Compensation, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic SB 444

Bill Number SB 444 *(if applicable)*

Name Logan McFaddin

Amendment Barcode *(if applicable)*

Job Title Director, Leg Affairs

Address 400 N Monroe St
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 413-2829

E-mail Logan.McFaddin@myfloridacfo.com

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

Representing CFO's office

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-24-14
Meeting Date

Topic Workers' Compensation

Bill Number SB 444 *(if applicable)*

Name Jim BRAINERD

Amendment Barcode *(if applicable)*

Job Title

Address 2814 Rabbit Hill Rd

Phone (850) 508-6716

Street

Tallahassee FL 32308

E-mail BRAINERDlaw@comcast.net

City *State* *Zip*

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

Representing Florida Association of Insurance Agents

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 510 (207354)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Ring
SUBJECT:	Local Government Neighborhood Improvement Districts
DATE:	April 23, 2014 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 510 authorizes local government neighborhood improvement districts (NIDs) to borrow money, incur debt and pledge special assessments to finance capital projects.

This bill does not have a fiscal impact on state government. Local governments may incur additional costs associated with conducting referenda.

II. Present Situation:

Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the "Safe Neighborhoods Act." The intent of the Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;

- Improve or redirect traffic and provide pedestrian safety; and
- Reduce crime rates.[1]

Section 163.503(1) defines the term "neighborhood improvement district" to mean:

> A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations. . . .

The Safe Neighborhoods Act allows county or municipal governing bodies to create NIDs through the adoption of a planning ordinance. Each NID that is established is required to register within 30 days with both the Department of Economic Opportunity and the Department of Legal Affairs and provide the name, location, size, type of NID, and such other information that the departments may require.[2] Under current law, there are four types of NIDs:

- Local government NIDs,
- Property owners' association NIDs,
- Community redevelopment NIDs, and
- Special NIDs, which are further classified as either residential or business.[3]

As of March 2014, there are 31 active NIDs in the state of Florida.[4] Twenty-eight of these are local government NIDs, two are special residential NIDs, and one is a property owners' association NID.

NID Boards and Revenue Sources

The board of directors of a local government NID is the local governing body of the municipality or county that created the NID; however, as an alternative, a majority of the local governing body may also appoint a different board.[5] The officers of an incorporated property owners' association serve as the board of directors for property owners' association NIDs.[6] The board of a special NID is a three-member body appointed by the governing body of the municipality or county that created the district.[7] The board of a community redevelopment NID is the community redevelopment board of commissioners, which is designated by the governing body of the municipality or county that created the board.[8]

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[1] *See* s. 163.502, F.S.
[2] Section 163.5055, F.S.
[3] *See* ss. 163.506-163.512, F.S.
[4] Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, *available at* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited March 11, 2014).
[5] Sections 163.506(1)(e), 163.506(3), F.S.
[6] Section 163.508(1)(e), F.S.
[7] Section 163.511(1)(f), F.S.
[8] Section 163.356, F.S.

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to two mills annually.[9] Special NIDs have the same taxing authority; however, this authority is subject to referendum.[10] Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting in a referendum.[11] Special *business* NID ad valorem taxes are approved if freeholders representing in excess of 50 percent of the assessed value of the property within the district approve the levy.[12]

All NIDs are also authorized, subject to referendum approval, to make and collect special assessments.[13] Assessments may not exceed $500 for each individual parcel of land per year and require an affirmative vote by a majority of the registered voters residing in the district.[14] Community redevelopment NIDs may also utilize community redevelopment trust funds to implement district planning and programming.[15]

NID Dissolutions

Local government and community redevelopment NIDs may be dissolved by the governing body that established them.[16] Property owners' association NIDs continue in perpetuity as long as the property owners' association created when establishing the NID exists.[17] Special NIDs are dissolved at the end of the tenth fiscal year of operation.[18]

NIDs and Bond Authority

Although NIDs have various powers, they do not have express authority to borrow funds. In 2006, the Florida Attorney General issued Opinion 2006-49, stating that an NID created by ordinance pursuant to s. 163.511, F.S., does not have the authority to borrow money to carry out the purposes of the district.[19] The Attorney General's Office reasoned that a statutorily created entity is limited to such powers expressly granted by law or reasonably implied to carry out its expressly granted power. The opinion further stated that "[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against it[] being done any other way."

Other Sources of Funding for Local Government Improvement Efforts

County and municipal governments have authority under current law and under their constitutional home rule authority to raise revenue that could be used for many of the purposes identified by the Safe Neighborhoods Act.

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[9] Section 163.506(1)(c), F.S.
[10] Section 163.511(1)(a) and (b), F.S.
[11] Section 163.511(3)(g), F.S.
[12] Section 163.511(4)(g), F.S.
[13] Section 163.514(16), F.S. This authority and any of the other NID powers enumerated in s.163.514, F.S., may be prohibited by the NID's enacting ordinance.
[14] *Id.*
[15] Section 163.512(1)(c), F.S.
[16] Sections 163.506(4) and 163.512(3), F.S.
[17] Section 163.508(4), F.S.
[18] Section 163.511(13), F.S. Special NIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.
[19] Op. Atty Gen. Fla. 2006-49 (2006).

Section 125.01(1)(q), F.S., provides that counties may establish:

> municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which it may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water…, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.…This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Section 125.01(1)(r), F.S., grants counties the power to levy and collect ad valorem taxes, and provides that no referendum is required for the levy by a county of ad valorem taxes for county purposes or for providing municipal services within any municipal service taxing unit. The distinction between a municipal service taxing unit and a municipal service benefit unit is that in a benefit unit the services are funded by a service charge or a special assessment rather than a tax.

All taxes, other than ad valorem taxes, are reserved to the state.[20] Local governments may levy other taxes only if they are authorized by general law. Not all local government revenue sources are taxes. Counties and municipalities may levy fees, assessments, or charges for services under their home rule authority. Special assessments may be used to fund certain services and to construct and maintain capital facilities, such as those appropriate for NIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit from the service or improvement funded by the assessment, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 163.506, F.S., to authorize local government NIDs to borrow money, contract loans, and incur indebtedness to finance capital projects. Loan terms may not exceed the life of the capital project secured by the loan.

The governing body of local government NIDs will be able to issue a resolution authorizing bonds. Bonds must be approved by the board of the district, the governing body of the municipality or county that created the district, and by referendum. The referendum required for bonds is the same referendum currently required to impose special assessments. Local government NIDs will be able to pledge special assessments to secure or repay district obligations.

[20] Fla. Const. Art. VII, s. 1(a).
[21] See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under SB 510, local governments may incur additional costs associated with conducting referenda.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 163.506 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Finance and Tax on March 19, 2014:
The CS:

- Restricts the NIDs bonding authority to capital projects.
- Requires bonding of NID special assessments to be approved by the same type of referendum required for these NIDs to impose special assessments.

B. Amendments:

None.

207354

576-02870-14

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

A bill to be entitled

An act relating to local government neighborhood improvement districts; amending s. 163.506, F.S.; providing that an ordinance that creates a local government neighborhood improvement district may authorize the district to incur certain debts and pledge the special assessment power of the district to pay such debts for the purpose of financing certain capital projects; providing conditions on the exercise of such power; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (1) of section 163.506, Florida Statutes, to read:

163.506 Local government neighborhood improvement districts; creation; advisory council; dissolution.—

(1) After a local planning ordinance has been adopted authorizing the creation of local government neighborhood improvement districts, the local governing body of a municipality or county may create local government neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(i) May authorize the district to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital project for a purpose permitted by the State Constitution and

207354

576-02870-14

this part, and to pledge the special assessment power of the district for the payment of such debts and bonds.

1. Loans contracted by the district pursuant to this paragraph may not have a term that exceeds the life of the project secured by the loan.

2. Bonds issued by the district pursuant to this paragraph must be authorized by resolution of the board, by resolution of the governing body of the municipality or county, and by a referendum as described in s. 163.514(16). As provided by resolution or trust indenture, or a mortgage issued pursuant thereto, bonds may be issued in one or more series and must bear the specified date or dates; be payable upon demand or mature at the specified time or times; bear interest at the specified rate or rates; be in the specified denomination or denominations; be in the specified form, registered or not, with or without coupon; carry specified conversion or registration privileges; have the specified rank or priority; be executed in the specified manner; be payable in the specified medium of payment, at such place or places, and subject to the specified terms of redemption, with or without premium; be secured in the specified manner; and have other characteristics as may be specified.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 510
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Ring
SUBJECT:	Local Government Neighborhood Improvement Districts
DATE:	April 24, 2014 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 510 authorizes local government neighborhood improvement districts (NIDs) to borrow money, incur debt and pledge special assessments to finance capital projects.

This bill does not have a fiscal impact on state government. Local governments may incur additional costs associated with conducting referenda.

II. Present Situation:

Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the "Safe Neighborhoods Act." The intent of the Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;

- Improve or redirect traffic and provide pedestrian safety; and
- Reduce crime rates.[1]

Section 163.503(1) defines the term "neighborhood improvement district" to mean:

> A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations. . . .

The Safe Neighborhoods Act allows county or municipal governing bodies to create NIDs through the adoption of a planning ordinance. Each NID that is established is required to register within 30 days with both the Department of Economic Opportunity and the Department of Legal Affairs and provide the name, location, size, type of NID, and such other information that the departments may require.[2] Under current law, there are four types of NIDs:

- Local government NIDs,
- Property owners' association NIDs,
- Community redevelopment NIDs, and
- Special NIDs, which are further classified as either residential or business.[3]

As of March 2014, there are 31 active NIDs in the state of Florida.[4] Twenty-eight of these are local government NIDs, two are special residential NIDs, and one is a property owners' association NID.

NID Boards and Revenue Sources

The board of directors of a local government NID is the local governing body of the municipality or county that created the NID; however, as an alternative, a majority of the local governing body may also appoint a different board.[5] The officers of an incorporated property owners' association serve as the board of directors for property owners' association NIDs.[6] The board of a special NID is a three-member body appointed by the governing body of the municipality or county that created the district.[7] The board of a community redevelopment NID is the community redevelopment board of commissioners, which is designated by the governing body of the municipality or county that created the board.[8]

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[1] *See* s. 163.502, F.S.
[2] Section 163.5055, F.S.
[3] *See* ss. 163.506-163.512, F.S.
[4] Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, *available at* http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited March 11, 2014).
[5] Sections 163.506(1)(e), 163.506(3), F.S.
[6] Section 163.508(1)(e), F.S.
[7] Section 163.511(1)(f), F.S.
[8] Section 163.356, F.S.

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to two mills annually.[9] Special NIDs have the same taxing authority; however, this authority is subject to referendum.[10] Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting in a referendum.[11] Special *business* NID ad valorem taxes are approved if freeholders representing in excess of 50 percent of the assessed value of the property within the district approve the levy.[12]

All NIDs are also authorized, subject to referendum approval, to make and collect special assessments.[13] Assessments may not exceed $500 for each individual parcel of land per year and require an affirmative vote by a majority of the registered voters residing in the district.[14] Community redevelopment NIDs may also utilize community redevelopment trust funds to implement district planning and programming.[15]

NID Dissolutions

Local government and community redevelopment NIDs may be dissolved by the governing body that established them.[16] Property owners' association NIDs continue in perpetuity as long as the property owners' association created when establishing the NID exists.[17] Special NIDs are dissolved at the end of the tenth fiscal year of operation.[18]

NIDs and Bond Authority

Although NIDs have various powers, they do not have express authority to borrow funds. In 2006, the Florida Attorney General issued Opinion 2006-49, stating that an NID created by ordinance pursuant to s. 163.511, F.S., does not have the authority to borrow money to carry out the purposes of the district.[19] The Attorney General's Office reasoned that a statutorily created entity is limited to such powers expressly granted by law or reasonably implied to carry out its expressly granted power. The opinion further stated that "[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against it[] being done any other way."

Other Sources of Funding for Local Government Improvement Efforts

County and municipal governments have authority under current law and under their constitutional home rule authority to raise revenue that could be used for many of the purposes identified by the Safe Neighborhoods Act.

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[9] Section 163.506(1)(c), F.S.
[10] Section 163.511(1)(a) and (b), F.S.
[11] Section 163.511(3)(g), F.S.
[12] Section 163.511(4)(g), F.S.
[13] Section 163.514(16), F.S. This authority and any of the other NID powers enumerated in s.163.514, F.S., may be prohibited by the NID's enacting ordinance.
[14] *Id.*
[15] Section 163.512(1)(c), F.S.
[16] Sections 163.506(4) and 163.512(3), F.S.
[17] Section 163.508(4), F.S.
[18] Section 163.511(13), F.S. Special NIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.
[19] Op. Atty Gen. Fla. 2006-49 (2006).

Section 125.01(1)(q), F.S., provides that counties may establish:

> municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which it may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water…, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.…This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Section 125.01(1)(r), F.S., grants counties the power to levy and collect ad valorem taxes, and provides that no referendum is required for the levy by a county of ad valorem taxes for county purposes or for providing municipal services within any municipal service taxing unit. The distinction between a municipal service taxing unit and a municipal service benefit unit is that in a benefit unit the services are funded by a service charge or a special assessment rather than a tax.

All taxes, other than ad valorem taxes, are reserved to the state.[20] Local governments may levy other taxes only if they are authorized by general law. Not all local government revenue sources are taxes. Counties and municipalities may levy fees, assessments, or charges for services under their home rule authority. Special assessments may be used to fund certain services and to construct and maintain capital facilities, such as those appropriate for NIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit from the service or improvement funded by the assessment, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 163.506, F.S., to authorize local government NIDs to borrow money, contract loans, and incur indebtedness to finance capital projects. Loan terms may not exceed the life of the capital project secured by the loan.

The governing body of local government NIDs will be able to issue a resolution authorizing bonds. Bonds must be approved by the board of the district, the governing body of the municipality or county that created the district, and by referendum. The referendum required for bonds is the same referendum currently required to impose special assessments. Local government NIDs will be able to pledge special assessments to secure or repay district obligations.

[20] Fla. Const. Art. VII, s. 1(a).
[21] See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under CS/SB 510, local governments may incur additional costs associated with conducting referenda.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 163.506 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:
The committee substitute:

- Restricts the NIDs bonding authority to capital projects.
- Requires bonding of NID special assessments to be approved by the same type of referendum required for these NIDs to impose special assessments.

B. Amendments:

None.

By Senator Ring

29-00692A-14 2014510__

A bill to be entitled

An act relating to local government neighborhood improvement districts; amending s. 163.506, F.S.; providing that an ordinance that creates a local government neighborhood improvement district may authorize the district to incur certain debts and pledge the funds, credit, property, and special assessment power of the district to pay such debts for the purpose of financing certain projects; providing conditions on the exercise of such power; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (1) of section 163.506, Florida Statutes, to read:

163.506 Local government neighborhood improvement districts; creation; advisory council; dissolution.—

(1) After a local planning ordinance has been adopted authorizing the creation of local government neighborhood improvement districts, the local governing body of a municipality or county may create local government neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(i) Authorizes the district to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital or other project for a purpose permitted by the State Constitution and this part, and to pledge the funds, credit, property, and special assessment power of the district for the payment of such debts and bonds.

1. Loans contracted by the district pursuant to this paragraph may not have a term that exceeds the life of the project secured by the loan.

2. Bonds issued by the district pursuant to this paragraph must be authorized by resolution of the board, by resolution of the governing body of the municipality or county, and by a referendum as described in s. 163.514(16). For commercial districts, such referendum is deemed approved if approved by an affirmative vote of freeholders owning more than 50 percent of the assessed value of the properties represented by ballots cast. As provided by resolution or trust indenture, or a mortgage issued pursuant thereto, bonds may be issued in one or more series and must bear the specified date or dates; be payable upon demand or mature at the specified time or times; bear interest at the specified rate or rates; be in the specified denomination or denominations; be in the specified form, registered or not, with or without coupon; carry specified conversion or registration privileges; have the specified rank or priority; be executed in the specified manner; be payable in the specified medium of payment, at such place or places, and subject to the specified terms of redemption, with or without premium; be secured in the specified manner; and have other characteristics as may be specified.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JEREMY RING
29th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 19, 2014

Honorable Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 510, relating to Neighborhood Improvement Districts, on the Appropriations Committee agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

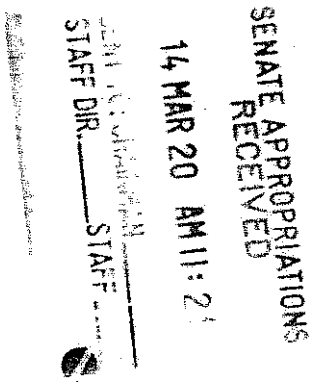
Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Cindy Kynoch, Staff Director



REPLY TO:
☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic _____ Bill Number 510 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2c/14
Meeting Date

Topic Neighborhood Improvement Districts

Bill Number 510 *(if applicable)*

Name Trey Price

Amendment Barcode *(if applicable)*

Job Title Public Policy Representative

Address 200 S. Monroe St
Street

Phone (850) 224-1400

Tallahassee FL 32301
City *State* *Zip*

E-mail Trey@floridarealtors.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Safe Neighborhood Improvement Districts Bill Number 510 *(if applicable)*

Name Yolanda Cash Jackson Amendment Barcode *(if applicable)*

Job Title Government Relations Consultant

Address 1 East Broward Blvd Phone 954985-4132
Street

Ft. Lauderdale FL E-mail YJackson@bplegal.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing City of Lauderhill

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 518 (790730)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Flores
SUBJECT:	Child Safety Devices in Motor Vehicles
DATE:	April 23, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Fav/CS**
3.	Carey	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 518 revises the ages of children who are required to use child restraint devices when being transported in a motor vehicle from 4 through 5 years to 4 through 6 years of age. The bill also removes a provision allowing a seat belt to be used in lieu of a specialized device for children between 4 and 5 years of age; however, a seat belt may be used for children between 4 and 6 years of age when the motor vehicle operator is not a member of the child's immediate family and the child is being transported gratuitously, in the case of an emergency, or when a medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The bill may have an indeterminate, but insignificant, positive fiscal impact on state and local government revenues if additional citations are issued.

II. Present Situation:

Currently, s. 316.613, F.S., requires every motor vehicle operator to properly use a crash-tested, federally approved child restraint device when transporting a child 5 years of age or younger. For children 3 years of age or younger, the restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children ages 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state. The requirements do not apply to a

school bus; a bus used to transport persons for compensation; a farm tractor; a truck weighing more than 26,000 pounds; or a motorcycle, moped, or bicycle.[1] Violation of these requirements constitutes a moving violation and violators have 3 points assessed against their driver license. The fine for a moving violation is $60,[2] in addition to other court costs[3].

A driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program. Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles (DHSMV), and the fee for the course must bear a reasonable relationship to the cost of providing the course.

Section 316.613(4), F.S., provides legislative intent that all state, county, and local law enforcement agencies, and safety councils, conduct a continuing safety and public awareness campaign as to the magnitude of the problem with child death and injury from unrestrained occupancy in motor vehicles.

Other States' Child Passenger Safety Laws

Child passenger restraint requirements vary based on age, weight and height. Often, this happens in three stages: infants use rear-facing infant seats; toddlers use forward-facing child safety seats; and older children use booster seats.

- All 50 states, the District of Columbia, Guam, the Northern Mariana Islands and the Virgin Islands require child safety seats for infants and children fitting specific criteria.
- 48 states and District of Columbia and Puerto Rico require booster seats or other appropriate devices for children who have outgrown their child safety seats but are still too small to use an adult seat belt safely. Only Florida and South Dakota allow the use of seatbelts (only) for children under the age of 5.
- Five states (California, Florida, Louisiana, New Jersey and New York) have seat belt requirements for school buses. Texas requires them on buses purchased after September 2010.[4]

Most child seat laws are primary enforcement violations throughout the states. Nebraska and Ohio are the only states having secondary enforcement laws. Both states refer to children older than 4 years of age. The age at which a child-specific restraint or booster seat is required varies by state.

[1] Section. 316.613(2)(a-e), F.S.
[2] Section. 318.18(3)(a), F.S.
[3] Section. 318.21, F.S.
[4] http://www.ghsa.org/html/stateinfo/laws/childsafety_laws.html, March 2014 (last visited 3/2/14)

Child-specific restraint or booster seat required[5]

Age Requirement	Number of States
3 and younger	1 (Florida)
4 and younger	South Dakota
5 and younger	9 states including AL,SC,LA, AR, OK, IA, NE, MT, NV
6 and younger	7 states including MS, KY, CT, NH, NM, ID, ND
7 and younger	31 states including TX, AZ, CA, GA, NC, VA
8 and younger	2 TN, WY

Safety Benefits

According to the Center for Disease Control and Prevention (CDC), "Child Passenger Safety: Fact Sheet," motor vehicle injuries are a leading cause of death among children in the U.S.

- Use of a Car seat reduces the risk for death to infants (aged less than 1 year) by 71 percent; and to toddlers (aged 1-4 years) by 54 percent in passenger vehicles.
- Use of a Booster seat reduces the risk for serious injury by 45 percent for children aged 4-8 years when compared with seat belt use alone)
- For older children and adults, use of a seat belt reduces the risk for death and serious injury by approximately one-half.

A recent study of five states that increased the age requirement to 7 or 8 years for car seat/booster seat use found that the rate of children using car seats and booster seats increased nearly three times and the rate of children who sustained fatal or incapacitating injuries decreased by 17 percent.[6]

The CDC has produced the following guidelines for parents and caregivers:

Child Seat Stages:

- *Birth up to age 2*—Rear-facing car seat.
- *Age 2 up to at least age 5*—Forward-facing car seat. When a child outgrows a rear-facing seat, he or she should be buckled in a forward-facing car seat, in the back seat, until at least age 5 or when they reach the upper weight or height limit of seat.
- *Age 5 up until seat belts fit properly*—booster seat. Once a child outgrows a forward-facing seat, (by reaching the upper height or weight limit of their seat) he or she should be buckled in a belt positioning booster seat until seat belts fit properly.
- *Once seat belts fit properly without a booster seat*—Child no longer needs to use a booster seat once seat belts fit them properly. The seat belt fits properly when the lap belt lays across

[5] http://www.iihs.org/iihs/topics/laws/safetybeltuse (last visited 3/4/14)
[6] http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited 3/4/14)

the upper thighs (not the stomach) and the shoulder belt lays across the chest (not the neck). The recommended height for proper seat belt fit is 57 inches tall.[7]

III. Effect of Proposed Changes:

The bill amends s. 316.613, F.S., requiring an operator of a motor vehicle who is transporting a child 6 years of age or younger to provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. The bill specifies the device for a child aged 4 through 6 years of age must be a separate carrier, an integrated child seat, or a booster seat.

Any such device must comply with the standards of the United States Department of Transportation and be secured in the vehicle.

Under the bill, motorists will no longer be permitted to transport children aged 4 through 5 with only a seat belt used as protection. However, the bill does allow for seat belt use if a child aged 4 through 6 years is being transported by an operator who is not a member of the child's immediate family gratuitously, in the case of an emergency, or when a medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The infraction is a moving violation punishable by a fine of $60 (and other court costs) and the assessment of 3 points against the motor vehicle operator driver license.

The bill will be effective January 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[7] Id.

B. Private Sector Impact:

There may be an increase in child restraint devices sales due to the expanded age requirement specified in PCS/CS/SB 518. Individuals who fail to use child restraint devices will subject to a fine. Also, there could be additional costs to individuals that either replace current child restraint devices or will make a first time purchase.

C. Government Sector Impact:

The bill may generate additional revenues to local and state government resulting from penalties as a result of the increased child safety device requirements. The potential revenue impact is likely positive, but indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 316.613 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 12, 2014:
Provides an exception to the requirements of child restraint devices for children ages 4 to 6 who have a medical condition that prohibits the use of such devices as evidenced by appropriate documentation from a health professional.

CS by Transportation Committee on March 6, 2014:
Reduces the upper age limit of children from 7 to 6 years and allows use of aftermarket booster seats for children aged 4 to 6 years when child is being transported in a motor vehicle. A seat belt alone is no longer sufficient protection for children 4 to 6 years of age. However, this provision does not apply when a safety belt is used by the driver and he or she is not a member of the immediate family transporting the child gratuitously or in case of an emergency.

B. Amendments:

None.

272442

LEGISLATIVE ACTION

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

The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 39
and insert:
(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

272442

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~ may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.

(5) Any person who violates this section commits a moving violation, punishable as provided in chapter 318 and shall have 3 points assessed against his or her driver license as

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

And the title is amended as follows:

Delete line 7

and insert:

seat, or child booster seat; providing exceptions;

790730

576-02500A-14

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to child safety devices in motor vehicles; amending s. 316.613, F.S.; revising child restraint requirements for children who are younger than a specified age; requiring an operator of a motor vehicle to use a separate carrier, integrated child seat, or child booster seat; providing exceptions; subjecting a violation to penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (5) of section 316.613, Florida Statutes, are amended to read:

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 6 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 6 ~~5~~ years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~

790730

576-02500A-14

may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition which necessitates an exception as evidenced by appropriate documentation from a health professional.

(5) A ~~Any~~ person who violates this section commits a moving violation, punishable as provided in chapter 318 and ~~shall have~~ 3 points shall be assessed against his or her driver license as set forth in s. 322.27. In lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect, with the court's approval, to participate in a child restraint safety program approved by the chief judge of the circuit in which the violation occurs, and, upon completing such program, the penalty specified in chapter 318 and associated costs may be waived at the court's discretion and the assessment of points shall be waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles, and the fee for the course must bear a reasonable relationship to the cost of providing the course.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations	
BILL:	CS/CS/SB 518
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Flores
SUBJECT:	Child Safety Devices in Motor Vehicles
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Fav/CS**
3.	Carey	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 518 revises current law to allow the use of a child booster seat as an approved child restraint device approved for use when transporting children from 4 through 5 years of age in a motor vehicle, and removes a provision allowing a seat belt to be used in lieu of a specialized device. An exception is made to allow the use of a seat belt for children between 4 and 5 years of age when the motor vehicle operator is not a member of the child's immediate family and the child is being transported gratuitously, in the case of an emergency, or when a medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The bill may have an indeterminate, but insignificant, positive fiscal impact on state and local government revenues if additional citations are issued.

II. Present Situation:

Currently, s. 316.613, F.S., requires every motor vehicle operator to properly use a crash-tested, federally approved child restraint device when transporting a child 5 years of age or younger. For children 3 years of age or younger, the restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children ages 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. These requirements apply to motor vehicles operated on the roadways, streets, and highways of this state. The requirements do not apply to a school bus; a bus used to transport persons for compensation; a farm tractor; a truck weighing

more than 26,000 pounds; or a motorcycle, moped, or bicycle.[1] Violation of these requirements constitutes a moving violation and violators have 3 points assessed against their driver license. The fine for a moving violation is $60,[2] in addition to other court costs[3].

A driver who violates this requirement may elect, with the court's approval, to participate in a child restraint safety program. Upon completing such program the above penalties may be waived at the court's discretion and the assessment of points waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles (DHSMV), and the fee for the course must bear a reasonable relationship to the cost of providing the course.

Section 316.613(4), F.S., provides legislative intent that all state, county, and local law enforcement agencies, and safety councils, conduct a continuing safety and public awareness campaign as to the magnitude of the problem with child death and injury from unrestrained occupancy in motor vehicles.

Other States' Child Passenger Safety Laws

Child passenger restraint requirements vary based on age, weight and height. Often, this happens in three stages: infants use rear-facing infant seats; toddlers use forward-facing child safety seats; and older children use booster seats.

- All 50 states, the District of Columbia, Guam, the Northern Mariana Islands and the Virgin Islands require child safety seats for infants and children fitting specific criteria.
- 48 states and District of Columbia and Puerto Rico require booster seats or other appropriate devices for children who have outgrown their child safety seats but are still too small to use an adult seat belt safely. Only Florida and South Dakota allow the use of seatbelts (only) for children under the age of 5.
- Five states (California, Florida, Louisiana, New Jersey and New York) have seat belt requirements for school buses. Texas requires them on buses purchased after September 2010.[4]

Most child seat laws are primary enforcement violations throughout the states. Nebraska and Ohio are the only states having secondary enforcement laws. Both states refer to children older than 4 years of age. The age at which a child-specific restraint or booster seat is required varies by state.

[1] Section. 316.613(2)(a-e), F.S.
[2] Section. 318.18(3)(a), F.S.
[3] Section. 318.21, F.S.
[4] http://www.ghsa.org/html/stateinfo/laws/childsafety_laws.html, March 2014 (last visited 3/2/14)

Child-specific restraint or booster seat required[5]

Age Requirement	Number of States
3 and younger	1 (Florida)
4 and younger	South Dakota
5 and younger	9 states including AL,SC,LA, AR, OK, IA, NE, MT, NV
6 and younger	7 states including MS, KY, CT, NH, NM, ID, ND
7 and younger	31 states including TX, AZ, CA, GA, NC, VA
8 and younger	2 TN, WY

Safety Benefits

According to the Center for Disease Control and Prevention (CDC), "Child Passenger Safety: Fact Sheet," motor vehicle injuries are a leading cause of death among children in the U.S.

- Use of a Car seat reduces the risk for death to infants (aged less than 1 year) by 71 percent; and to toddlers (aged 1-4 years) by 54 percent in passenger vehicles.
- Use of a Booster seat reduces the risk for serious injury by 45 percent for children aged 4-8 years when compared with seat belt use alone)
- For older children and adults, use of a seat belt reduces the risk for death and serious injury by approximately one-half.

A recent study of five states that increased the age requirement to 7 or 8 years for car seat/booster seat use found that the rate of children using car seats and booster seats increased nearly three times and the rate of children who sustained fatal or incapacitating injuries decreased by 17 percent.[6]

The CDC has produced the following guidelines for parents and caregivers:

Child Seat Stages:

- *Birth up to age 2*—Rear-facing car seat.
- *Age 2 up to at least age 5*—Forward-facing car seat. When a child outgrows a rear-facing seat, he or she should be buckled in a forward-facing car seat, in the back seat, until at least age 5 or when they reach the upper weight or height limit of seat.
- *Age 5 up until seat belts fit properly*—booster seat. Once a child outgrows a forward-facing seat, (by reaching the upper height or weight limit of their seat) he or she should be buckled in a belt positioning booster seat until seat belts fit properly.
- *Once seat belts fit properly without a booster seat*—Child no longer needs to use a booster seat once seat belts fit them properly. The seat belt fits properly when the lap belt lays across

[5] http://www.iihs.org/iihs/topics/laws/safetybeltuse (last visited 3/4/14)
[6] http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited 3/4/14)

the upper thighs (not the stomach) and the shoulder belt lays across the chest (not the neck). The recommended height for proper seat belt fit is 57 inches tall.[7]

III. Effect of Proposed Changes:

The bill amends s. 316.613, F.S., requiring an operator of a motor vehicle who is transporting a child 6 years of age or younger to provide for the protection of the child by properly using a crash-tested, federally approved child restraint device. The bill specifies the device for a child aged 4 through 6 years of age must be a separate carrier, an integrated child seat, or a booster seat.

Motorists will no longer be permitted to transport children aged 4 through 5 with only a seat belt used as protection. However, the bill does allow for seat belt use if a child aged 4 through 5 years is being transported by an operator who is not a member of the child's immediate family gratuitously, in the case of an emergency, or when a medical condition necessitates an exception as evidenced by appropriate documentation from a health professional.

The infraction is a moving violation punishable by a fine of $60 (and other court costs) and the assessment of 3 points against the motor vehicle operator driver license.

The bill will be effective January 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an increase in child restraint devices sales due to the expanded age requirement specified in CS/CS/SB 518. Individuals who fail to use child restraint

[7] Id.

devices will subject to a fine. Also, there could be additional costs to individuals that either replace current child restraint devices or will make a first time purchase.

C. Government Sector Impact:

The bill may generate additional revenues to local and state government resulting from penalties as a result of the increased child safety device requirements. The potential revenue impact is likely positive, but indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 316.613 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 24, 2014:
Provides that a child booster seat may be used as an approved child restraint device approved for use when transporting children from 4 through 5 years of age in a motor vehicle, and removes a provision allowing a seat belt to be used in lieu of a specialized device.

CS by Transportation Committee on March 6, 2014:
Reduces the upper age limit of children from 7 to 6 years and allows use of aftermarket booster seats for children aged 4 to 6 years when child is being transported in a motor vehicle. A seat belt alone is no longer sufficient protection for children 4 to 6 years of age. However, this provision does not apply when a safety belt is used by the driver and he or she is not a member of the immediate family transporting the child gratuitously or in case of an emergency.

B. Amendments:

None.

553518

LEGISLATIVE ACTION

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

The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 34
and insert:
(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

553518

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~ may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.

(5) Any person who violates this section commits a moving violation, punishable as provided in chapter 318 and shall have 3 points assessed against his or her driver license as

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

And the title is amended as follows:

Delete line 7

and insert:

seat, or child booster seat; providing exceptions;

By the Committee on Transportation; and Senator Flores

596-02213-14 2014518c1

A bill to be entitled

An act relating to child safety devices in motor vehicles; amending s. 316.613, F.S.; revising child restraint requirements for children who are younger than a specified age; requiring an operator of a motor vehicle to use a separate carrier, integrated child seat, or child booster seat; providing an exception; subjecting a violation to penalties; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (5) of section 316.613, Florida Statutes, are amended to read:

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 6 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 6 ~~5~~ years, a separate carrier, an integrated child seat, or a child booster seat ~~belt~~ may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the motor vehicle operator is not a member of the child's immediate family and is transporting the child gratuitously or in case of an emergency.

(5) A ~~Any~~ person who violates this section commits a moving violation, punishable as provided in chapter 318 and ~~shall have~~ 3 points shall be assessed against his or her driver license as set forth in s. 322.27. In lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect, with the court's approval, to participate in a child restraint safety program approved by the chief judge of the circuit in which the violation occurs, and, upon completing such program, the penalty specified in chapter 318 and associated costs may be waived at the court's discretion and the assessment of points shall be waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles, and the fee for the course must bear a reasonable relationship to the cost of providing the course.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-24-14
Meeting Date

Topic Child Safety Devices in Motor Vehicles

Bill Number SB 518 *(if applicable)*

Name Erin Choy

Amendment Barcode *(if applicable)*

Job Title Government Markets Consultant

Address P.O.Box 1033
Street
Tallahassee FL 32302
City *State* *Zip*

Phone (850) 556-4133

E-mail echoy@nationalstrategies.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic _____ Bill Number 518 *(if applicable)*

Name Chris Nuland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-233-3051
Street

Jacksonville FL 32204 E-mail nulandlawfad.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Public Health Association

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 24 2014
Meeting Date

Topic Child Safety Devices

Bill Number SB 518 *(if applicable)*

Name Lee Moffitt

Amendment Barcode *(if applicable)*

Job Title Attorney at Law

Address 3327 NW Perimeter Rd
Street
Palm City FL 34990
City *State* *Zip*

Phone 813 760-5712

E-mail lee.moffitt@arlaw.com

Speaking: ☑ For ☐ Against ☐ Information

Representing AAA Auto Clubs

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/04
Meeting Date

Topic Child Restraints

Bill Number 318 *(if applicable)*

Name Mary-Lynn Cullen

Amendment Barcode *(if applicable)*

Job Title Legislative Liaison

Address 1674 University Pkwy. *Street*

Phone 941-928-0278

Sarasota *City* Fl. *State* 34243 *Zip*

E-mail acchildren@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Advocacy Institute for Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-24-14
Meeting Date

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

Topic Child Safety Devices

Bill Number SB 518 *(if applicable)*

Name Jim Millican

Amendment Barcode *(if applicable)*

Job Title Executive Chair

Address 4360 - 55 AV N
Street
ST. Pete FL 33714
City *State* *Zip*

Phone 727-481-2852

E-mail jmillican@icamanfire.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Suncoast Safe Kids

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 550 (435328)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Hukill
SUBJECT:	Traveling Across County Lines to Commit a Felony Offense
DATE:	April 21, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 550 creates section 843.22, Florida Statutes, which makes it a third degree felony for a person to travel any distance with the intent to commit a felony offense in a Florida county that is not their residence. The bill also makes persons who are charged with committing the new offense ineligible for pretrial release without appearing before a judge.

The Criminal Justice Impact Conference found the bill as originally filed would have an insignificant impact on prison bed space. The changes made to the original bill are likely to reduce this fiscal impact. The bill will also have some impact on county jails because a person charged with the new offense cannot be released on pre-trial release without appearing before a judge. In some cases, this will result in a minimum of an overnight stay in jail which would not otherwise occur.

II. Present Situation:

According to Martin County Sheriff William Snyder, there has been a recent phenomenon in Martin County, and most Florida counties, where traveling burglars dubbed "the pillowcase burglars" break into houses near the interstate, stuff the most valuable items into pillowcases and immediately flee to another county. According to Snyder, traditional methods of law enforcement such as using local pawn shop databases, confidential informants, normal proactive

police patrols, or targeted patrols based on time and place of burglary are less effective because of the burglars' speedy departure from the county of the burglary.[1]

Bail Determinations

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[2] Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.[3]

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.[4] Courts must consider certain things when determining whether to release a defendant on bail and what level bail should be set at (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).[5]

Sentencing Guidelines

Chapter 921, F.S., contains the Criminal Punishment Code, which provides sentencing criteria to guide the imposition of criminal penalties for the commission of a felony offense. The "offense severity ranking chart," provided in s. 921.0022, F.S., has ten offense levels, ranked from least severe, which are level one offenses, to most severe, which are level ten offenses. In the event that a particular felony does not have a specific sentencing severity level set in s. 921.0022, F.S., its severity level is decided according to the following parameters:

- A felony of the third degree is within offense level one.
- A felony of the second degree is within offense level four.
- A felony of the first degree is within offense level seven.
- A felony of the first degree punishable by life is within offense level nine.
- A life felony is within offense level ten.[6]

III. Effect of Proposed Changes:

Section 1 creates s. 843.22, F.S., which makes it a third degree felony for a person to travel any distance with the intent to commit burglary in a Florida county that is not his or her county of

[11] Sascha Cordner, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars,'* WFSU-FM, Dec. 18, 2013, *available at*, http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars.

[2] Report No. 10-08, "*Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010 (on file with Community Affairs Committee).

[3] *Id.*

[4] Section 903.046, F.S.

[5] *Id.*

[6] Section 921.0023, F.S.

residence. An additional element of the offense is that the travel must have been for the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

The bill defines "county of residence" as the county within Florida in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.

Section 2 amends s. 903.046(2)(l), F.S., to prohibit those charged with traveling across county lines with the intent to commit a felony from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public. The bill makes the crossing of a county line with the intent to commit a felony a factor to be considered by the court when making a bail determination.

Section 3 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 550 would have an insignificant negative impact on state prison beds because the bill

creates a new third degree felony offense. The bill may also have a negative jail bed impact because it prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant. Because of the changes made to the original bill, PCS/SB 550 is likely to have a smaller fiscal impact.

According to the Department of Corrections (DOC), there will be a $3,400 fiscal impact on the agency's technology systems due to the need for a new offense code and additional changes to existing codes and tables. The DOC estimates 40 hours of work at $85.00 an hour. This amount can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not allocate an "offense severity level" to the newly created crime for sentencing purposes. Therefore, pursuant to s. 921.0023(1), F.S., the severity level will be level one, which will score 0.7 points as an additional offense on a score sheet.[7]

VIII. Statutes Affected:

This bill substantially amends section 903.046 of the Florida Statutes.

This bill creates section 843.22 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 9, 2014:

The committee substitute:

- Limits the definition of the term "felony offense" as used in the bill to include only burglary.
- Adds an element to the new offense requiring that the person's travel must have been for the purpose of thwarting law enforcement efforts to track items stolen in the burglary.

B. Amendments:

None.

[7] Office of the State Courts Administrator, *2014 Judicial Impact Statement – SB 550* (March 13, 2014) (on file with the Senate Committee on Community Affairs).

240590

LEGISLATIVE ACTION

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

The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment

Delete lines 38 - 40
and insert:
person's county of residence commits an additional felony of the

435328

576-04094-14

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

A bill to be entitled

An act relating to traveling across county lines to commit a felony offense; creating s. 843.22, F.S.; defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; amending s. 903.046, F.S.; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is created to read:

843.22 Traveling across county lines with intent to commit a felony offense.—

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

(a) "County of residence" means the county within this state in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

1. The address on a person's driver license or state identification card;

2. Records of real property or mobile home ownership;

3. Records of a lease agreement for residential property;

435328

576-04094-14

4. The county in which a person's motor vehicle is registered;

5. The county in which a person is enrolled in an educational institution; and

6. The county in which a person is employed.

(b) "Felony offense" means burglary as defined in s. 810.02, including an attempt, solicitation, or conspiracy to commit such offense.

(2) A person who travels any distance with the intent to commit a felony offense in a county in this state other than the person's county of residence, if the purpose of the person's travel is to thwart law enforcement attempts to track the items stolen in the burglary, commits an additional felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (l) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(l) Whether the crime charged is a violation of s. 843.22 or chapter 874 or alleged to be subject to enhanced punishment under chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she is ~~shall~~ not ~~be~~ eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the

435328

576-04094-14

public.

Section 3. This act shall take effect October 1, 2014.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 550
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Hukill
SUBJECT:	Traveling Across County Lines to Commit a Felony Offense
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Clodfelter	Sadberry	ACJ	**Fav/CS**
4.	Clodfelter	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 550 creates section 843.22, Florida Statutes, which makes it a third degree felony for a person to travel any distance with the intent to commit a felony offense in a Florida county that is not their residence. The bill also makes persons who are charged with committing the new offense ineligible for pretrial release without appearing before a judge.

The Criminal Justice Impact Conference found the bill as originally filed would have an insignificant impact on prison bed space. The changes made to the original bill are likely to reduce this fiscal impact. The bill will also have some impact on county jails because a person charged with the new offense cannot be released on pre-trial release without appearing before a judge. In some cases, this will result in a minimum of an overnight stay in jail which would not otherwise occur.

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police patrols, or targeted patrols based on time and place of burglary are less effective because of the burglars' speedy departure from the county of the burglary.[1]

Bail Determinations

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.[2] Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.[3]

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.[4] Courts must consider certain things when determining whether to release a defendant on bail and what level bail should be set at (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).[5]

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III. Effect of Proposed Changes:

Section 1 creates s. 843.22, F.S., which makes it a third degree felony for a person to travel any distance with the intent to commit burglary in a Florida county that is not his or her county of

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[1] Sascha Cordner, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars,'* WFSU-FM, Dec. 18, 2013, *available at*, http://news.wfsu.org/post/sheriff-enlists-legislative-help-crack-down-growing-problem-pillowcase-burglars.

[2] Report No. 10-08, "*Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed,"* Office of Program Policy Analysis & Government Accountability, January 2010 (on file with Community Affairs Committee).

[3] *Id.*

[4] Section 903.046, F.S.

[5] *Id.*

[6] Section 921.0023, F.S.

residence. An additional element of the offense is that the travel must have been for the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

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Section 3 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that SB 550 would have an insignificant negative impact on state prison beds because the bill

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VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not allocate an "offense severity level" to the newly created crime for sentencing purposes. Therefore, pursuant to s. 921.0023(1), F.S., the severity level will be level one, which will score 0.7 points as an additional offense on a score sheet.[7]

VIII. Statutes Affected:

This bill substantially amends section 903.046 of the Florida Statutes.

This bill creates section 843.22 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:
The committee substitute:

- Limits the definition of the term "felony offense" as used in the bill to include only burglary.
- Adds an element to the new offense requiring that the person's travel must have been for the purpose of thwarting law enforcement efforts to track items stolen in the burglary.

B. Amendments:

None.

[7] Office of the State Courts Administrator, *2014 Judicial Impact Statement – SB 550* (March 13, 2014) (on file with the Senate Committee on Community Affairs).

By Senator Hukill

8-00792-14 2014550__

A bill to be entitled

An act relating to traveling across county lines to commit a felony offense; creating s. 843.22, F.S.; defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; amending s. 903.046, F.S.; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is created to read:

843.22 Traveling across county lines with intent to commit a felony offense.—

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

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1. The address on a person's driver license or state identification card;

2. Records of real property or mobile home ownership;

3. Records of a lease agreement for residential property;

4. The county in which a person's motor vehicle is registered;

8-00792-14 2014550__

5. The county in which a person is enrolled in an educational institution; and

6. The county in which a person is employed.

(b) "Felony offense" means any of the following felony offenses, including an attempt, solicitation, or conspiracy to commit such offense:

1. Battery as provided in chapter 784.

2. Stalking as provided in s. 784.048.

3. Kidnapping as defined in s. 787.01.

4. Sexual battery as defined in s. 794.011.

5. Lewdness as defined in s. 796.07.

6. Prostitution as defined in s. 796.07.

7. Arson as provided in s. 806.01.

8. Burglary as defined in s. 810.02.

9. Theft as provided in s. 812.014.

10. Robbery as defined in s. 812.13.

11. Carjacking as defined in s. 812.133.

12. Home-invasion robbery as defined in s. 812.135.

13. Trafficking in a controlled substance as provided in s. 893.135.

14. Racketeering as provided in chapter 895.

(2) A person who travels any distance with the intent to commit a felony offense in a county in this state other than the person's county of residence commits an additional felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (l) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

(2) When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider:

(l) Whether the crime charged is a violation of s. 843.22 or chapter 874 or alleged to be subject to enhanced punishment under chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she is ~~shall~~ not ~~be~~ eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 3. This act shall take effect October 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

April 10, 2014

The Honorable Joe Negron
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 550 – Traveling Across County Lines to Commit a Felony Offense

Dear Chairman Negron:

Senate Bill 550, relating to Traveling Across County Lines to Commit a Felony Offense, has been referred to the Appropriations Committee. I am requesting your consideration to include SB 550 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Cindy Kynoch, Staff Director of the Appropriations Committee
Alicia Weiss, Administrative Assistant of the Appropriations Committee

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/29/2014
Meeting Date

Topic _____ Bill Number 550 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 24, 2014
Meeting Date

Topic Traveling Across County Lines

Bill Number SB550 *(if applicable)*

Name Eric Westfall

Amendment Barcode _____ *(if applicable)*

Job Title Lieutenant

Address 123 W. Indiana Ave *Street*

Phone 386.736.5961

DeLand *City* FL *State* 32720 *Zip*

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 712
INTRODUCER:	Senator Galvano and others
SUBJECT:	Taxes on Prepaid Calling Arrangements
DATE:	April 24, 2014
REVISED:	

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

I. Summary:

SB 712 revises the definition of "prepaid calling arrangement" in chapter 202, F.S., relating to the Communication Services Tax and chapter 212. F.S., relating to the sales tax, to include mobile communications services that meet specified conditions. The bill expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls, and provides that the purchaser of prepaid units may use the units to purchase communication services other than mobile communication services, if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services.

The changes made by the bill are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date, July 1, 2014.

The Revenue Estimating Conference estimated that this bill will have a zero cash impact in Fiscal Year 2014-2015, with the following recurring, negative impacts: General Revenue Fund ($1.4 million), Public Education Capital Outlay Trust Fund ($5.7 million), and local governments ($11.2 million). Additional losses of an indeterminate amount may occur due to the purchase, on a prepaid basis, of other communication services through the same handset or other electronic device that is used by the purchaser to access mobile communication services. See Section V. of this analysis for additional information regarding the fiscal impact of the bill.

The mandates constitutional provision may apply to this bill, requiring a two-thirds vote of the membership of each house for passage. See Section IV.A. of the analysis.

II. Present Situation:

Communications Services Tax

Chapter 202, F.S., provides for a tax on communication services, including telecommunications, cable, direct-to-home satellite and related services. The communications services tax includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[1] In addition, local governments may impose a local tax rate of up to 7.12 percent.[2] The statewide, total average tax rate is approximately 14.21 percent.

A portion of the state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the General Revenue Fund and a portion is distributed to local governments.[3] Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used to fund public schools', community colleges', and universities' capital projects.

Prepaid Calling Arrangement

The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.[4] However, the definition of the term "sales price" expressly excludes the "sale or recharge of a prepaid calling arrangement," so CST is not collected on the sale of a prepaid calling arrangement. [5]

The term "prepaid calling arrangement" is defined to mean "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount."[6]

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.[7] The term "prepaid calling arrangement" as defined in ch. 212, F.S., means "the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount."[8] The

[1] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Direct-to-home satellite is taxed at a rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax. The local tax does not apply to these services.
[2] Section 202.19, F.S.
[3] Section 202.18, F.S.
[4] Section 202.12, F.S.
[5] Section 202.11(13)(b)4., F.S.
[6] Section 202.11(9), F.S.
[7] Section 212.05(1)(e)1., F.S.
[8] *Id*.

definition of "prepaid calling arrangement" in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

When the definition of prepaid calling arrangement was placed in the statute[9], prepaid calling arrangements typically consisted of prepaid calling cards purchased in advance and limited to telephone calls. However, since then the telecommunications industry has developed to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today's modern smartphones. This has led to increased utilization of prepaid mobile services. As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and the ability to collect communication services taxes.

As technology evolved, most communications service providers and other prepaid phone retailers continued to apply the sales tax to all prepaid mobile phone plans, even though the plans did not meet the strict definition of a "prepaid calling arrangement." This practice continues today for all prepaid plans.

DOR Tax Information Publication on Prepaid Communications Services

In March of 2012, DOR issued Tax Information Publication (TIP) No. 12ADM-02 to provide clarification regarding the application of Florida taxes to sales of certain prepaid communications plans and services.[10] The TIP stated that certain prepaid communications plans or services are not "prepaid calling arrangements." It continued:

> Examples of such plans that do not fall under this definition include, but are not limited to:
> - service that includes text messaging, multimedia messaging, web, e-mail, etc.;
> - unlimited calling plans that do *not* decline with usage;
> - services or plans that are *not* sold in predetermined units or dollars; or
> - services or plans that are *not* originated using an access number or authorization code.[11]

The TIP concluded that a "sale of a prepaid card or prepaid arrangement that does not fall under the strict definition of a "prepaid calling arrangement" is not subject to sales tax. Instead, sales of such plans are subject to CST.[12]

The TIP was retracted on July 29, 2013, after DOR received a notice contesting the TIP as an un-promulgated rule. Currently, DOR is in the rule development process.

In summary, the current statutory provisions seem to require the conclusion that sales of prepaid calling plans or services that meet the **strict** definition of a "prepaid calling arrangement" are

[9] Chapter 2000-260, Laws of Florida.
[10] Florida Department of Revenue, *Prepaid Communications Services*, TIP No. 12ADM-02 (March 27, 2012) *available at* http://dor.myflorida.com/dor/tips/tip12adm-02.html.
[11] *Id*. Emphasis in the original.
[12] *Id*.

subject to the state sales tax (6 percent) and local discretionary sales surtaxes, and that sales of plans that do not meet the strict definition are subject to the state CST (6.65 percent), gross receipts tax (2.52) and the local CST (variable rate) applicable to other communication services.

Communications service providers do not agree with this conclusion and argue that the prepaid mobile phone plans being sold today are subject only to the state sales tax and local discretionary sales surtaxes.

III. Effect of Proposed Changes:

Section 1 amends subsection 202.11(9), F.S., to revise the definition of the term "prepaid calling arrangement." For other than mobile communications services, the term includes a right to use communications services "for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered."

For mobile communications services, the term includes "a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and
3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services."

Predetermined units may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

The bill expands the definition of "prepaid calling arrangement" to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

In addition, the bill provides that the purchaser of prepaid units may use the units to purchase other communication services other than mobile communication services if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services. This provision may result in communication services currently subject to CST tax rates being subject to only sales tax in the future if they are sold as part of a prepaid calling arrangement.

Section 2 amends paragraph 212.05(1)(e), F.S., to define the term "prepaid calling arrangement" to have the same meaning as provided for in s. 202.11, F.S.

The bill also provides that if a purchaser of a prepaid calling arrangement has paid sales tax on the sale or recharge of such arrangement, no additional sales tax or CST tax is due or payable if the purchaser applies one or more units of the prepaid calling arrangement to obtain communications services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services, other services that are not communications services, or products.

Section 3 provides that the amendments made by the bill are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4 provides that, except as otherwise expressly provided in section 3, the bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

The mandates provision may apply because the bill redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimated that SB 712 will have a zero cash impact in Fiscal Year 2014-2015, with the following recurring, negative impacts: General Revenue ($1.4 million), PECO Trust ($5.7 million), and Local ($11.2 million). Additional losses of an indeterminate amount may occur due to the purchase, on a prepaid basis, of other communication services through the same handset or other electronic device that is used by the purchaser to access mobile communication services.

In addition, a loss of up to $600 million in audit recoveries may occur if the Department of Revenue were to successfully enforce the strict definition of "prepaid calling arrangement," with a potential loss of up to $200 million annually on a going-forward basis. These amounts reflect the estimate of what CST tax collections would have been in the past and would be in the future if CST tax, instead of sales tax, were collected on prepaid calling arrangements. However, because current industry practice is to collect sales tax on prepaid mobile communications services, and the timing of any successful Department of Revenue action is unknown, it is uncertain if and when these losses would be realized.

B. Private Sector Impact:

Communications service providers can continue to offer a prepaid plan consisting of a flat-rate charge for a predetermined number of units that can be used to purchase mobile communications services, including services such as texting, without the sale being subject to the higher CST rate. Purchasers of these plans will continue to pay the sales tax rate instead of the higher CST tax rate.

C. Government Sector Impact:

The bill may require that the Department of Revenue (DOR) notify all businesses that sell prepaid wireless telecommunication services of the changes made by the bill. This would require mailing a Tax Information Publication to 262,200 businesses. The estimated nonrecurring cost to DOR is $125,646.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.11 and 212.05.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senators Galvano, Gibson, Stargel, Abruzzo, Soto, Altman, and Garcia

26-00835C-14 2014712__

A bill to be entitled

An act relating to taxes on prepaid calling arrangements; amending ss. 202.11 and 212.05, F.S.; revising the definition of "prepaid calling arrangement" to clarify and update which services are included under that definition and subject to a sales tax; providing for retroactive application; providing an effective date.

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

Section 1. Subsection (9) of section 202.11, Florida Statutes, is amended to read:

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

(9) "Prepaid calling arrangement" means: ~~the separately stated retail sale by advance payment of~~

(a) A right to use communications services, other than mobile communications services, for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which ~~that~~ consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered; or ~~and that are sold in predetermined units or dollars of which the number declines with use in a known amount.~~

(b) A right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis

Florida Senate - 2014 **SB 712**

26-00835C-14 2014712__

if:

1. The purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;

2. The purchaser is not required to purchase additional units; and

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units described in this subsection may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

Section 2. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

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

(e)1. At the rate of 6 percent on charges for:

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" has the same meaning as provided in s. 202.11 ~~means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount~~.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to have taken ~~take~~ place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

(IV) No additional tax under this chapter or chapter 202 is due or payable if a purchaser of a prepaid calling arrangement, who has paid tax under this chapter on the sale or recharge of such arrangement, applies one or more units of the prepaid calling arrangement to obtain communications services as

described in s. 202.11(9)(b)3., other services that are not communications services, or products.

b. The installation of telecommunication and telegraphic equipment.

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, are ~~shall be~~ equally applicable to any tax paid under ~~the provisions of~~ this section on charges for prepaid calling arrangements, telecommunication or telegraph services, or electric power subsequently found to be uncollectible. The term ~~word~~ "charges" under ~~in~~ this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of this ~~the~~ state, or any municipality upon the purchase, sale, or recharge of prepaid calling arrangements or upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

Section 3. The amendments made by this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4. Except as otherwise expressly provided in section 3 of this act, this act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 2, 2014

Senator Joe Negron
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that SB 712, Taxes on Prepaid Calling Arrangements, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/29/2014
Meeting Date

Topic _____ Bill Number 712 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Thurs 2/9
Meeting Date

712

Topic Prepaid communications

Bill Number ~~712~~ *(if applicable)*

Name Doug Mannheimer

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 215 S. Monroe St. Suite 400
Street

Phone 850 681-6810

Tallahassee
City *State* *Zip*

E-mail dmannheimer@broadandcassel.com

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

Waive in Support

Representing Sprint

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic Prepaid

Bill Number SB712 *(if applicable)*

Name Jorge Chamizo

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 108 South Monroe Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850)681-0024

E-mail jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

Representing TracFone Wireless

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Pre-Paid Calling

Bill Number SB 712 *(if applicable)*

Name Brewster Bevis

Amendment Barcode *(if applicable)*

Job Title Senior Vice President

Address 516 N Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 224-7173

E-mail bbevis@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24
Meeting Date

Topic Cst on Prepaid

Bill Number SB 712 *(if applicable)*

Name Woody Simmons

Amendment Barcode *(if applicable)*

Job Title VP Govt Affairs

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

Phone 222-6300

E-mail Woodrow.Simmons@Verizon.Com

Speaking: ☒ For ☐ Against ☐ Information

Representing Verizon Communications

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic _____ Bill Number 712 *(if applicable)*

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

Job Title Attorney

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

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

Speaking: ☑ For ☐ Against ☐ Information

Representing T-Mobile

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Prepaid Calling Arrangements

Bill Number 712 *(if applicable)*

Name JC Flores

Amendment Barcode *(if applicable)*

Job Title Regional Director - External Affairs

Address 150 W Flagler St.
Street

Phone 305-347-5406

Miami FL 33130
City *State* *Zip*

E-mail JF323W@att.com

Speaking: ☑ For ☐ Against ☐ Information

Representing AT&T Waive in Support

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 734 (951274)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senators Sobel and Abruzzo
SUBJECT:	Cancer Control and Research
DATE:	April 21, 2014 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 734 reduces the number of members of the Cancer Control and Research Advisory Council (CCRAB) from 35 to 15 and revises which organizations are represented on the CCRAB, as well as how CCRAB members and the chairperson of the CCRAB are appointed. The bill also revises the duties of the CCRAB by eliminating the CCRAB's responsibility for recommending the awarding of grants and contracts to private entities and government agencies for cancer control, prevention, education, or research. The bill requires the CCRAB to recommend to the state surgeon general a statewide research plan.

The bill has no fiscal impact.

II. Present Situation:

The Florida Cancer Control and Research Advisory Council was established by the Legislature in 1979 to advise the Legislature, governor, and state surgeon general on how to reduce the cancer burden in Florida.[1] The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt).[2] The CCRAB:

[1] Florida Cancer Control and Research Advisory Council, *What is CCRAB?*, found at http://www.ccrab.org/, last visited on March 7, 2014.
[2] *See* s. 1004.435(4), F.S.

- Advises the Board of Governors, the state surgeon general, and the Legislature on cancer control and research in Florida;
- Annually approves the Florida Cancer Plan;
- Provides recommendations for the Florida Cancer Plan to include the coordination and integration of plans concerned with cancer control and research provided by other stakeholders;
- Formulates and recommends to the state surgeon general:
  - A plan for the care and treatment of persons suffering from cancer,
  - Standard requirements for organization, equipment, and conduct of cancer units or departments in hospitals and clinics, and
  - The designation of cancer units following a survey of needs and facilities for treatment of cancer throughout the state;
- Recommends grant awards and contracts to qualified recipients;[3]
- Develops educational materials and programs; and
- Recommends rules and methods of implementing or enforcing laws concerned with cancer control, research, and education.

The CCRAB consists of 35 members, including appointees by the speaker of the House of Representatives, the president of the Senate, the governor, and other persons. Members represent:

- American Cancer Society,
- Florida Tumor Registrars Association,
- Sylvester Comprehensive Cancer Center of the University of Miami,
- Department of Health (DOH),
- University of Florida Shands Cancer Center,
- Agency for Health Care Administration,
- Florida Nurses Association,
- Florida Osteopathic Medical Association,
- American College of Surgeons,
- School of Medicine of the University of Miami,
- College of Medicine of the University of Florida,
- Nova Southeastern University College of Osteopathic Medicine,
- College of Medicine of the University of South Florida,
- College of Public Health of the University of South Florida,
- Florida Society of Clinical Oncology,
- Florida Obstetric and Gynecologic Society,
- Florida Ovarian Cancer Alliance Speaks,
- Florida Medical Association,
- Florida Pediatric Society,
- Florida Radiological Society,
- Florida Society of Pathologists,
- Moffitt,

[3] According to a phone conversation with Susan Fleming at the DOH on Mar. 10, 2014, the Florida Cancer Control Research Fund, from which the council was supposed to grant the awards and contracts, was never implemented or funded.

- Florida Dental Association,
- Florida Hospital Association,
- Association of Community Cancer Centers,
- Statutory teaching hospitals,[4]
- Florida Association of Pediatric Tumor Programs, Inc.,
- Cancer Information Services,
- Florida Agricultural and Mechanical University Institute of Public Health,
- Florida Society of Oncology Social Workers, and
- Consumer advocates from the general public.

In 2013, the Legislature passed 2013-50, L.O.F., which created the Cancer Center of Excellence Award and amended s. 1004.435(4), F.S., to require the CCRAB, along with the Biomedical Research Advisory Council (BRAC), to develop performance measures, a rating system, a rating standard, and an application for the Cancer Center of Excellence Award. The CCRAB is required to select by majority vote seven members to form a joint committee with six members of the BRAC in order to implement the Cancer Center of Excellence Award.

The Florida Cancer Control and Research Fund

The Florida Cancer Control and Research Fund is not an official trust fund of the state of Florida. The fund was created by ch. 2002-387, L.O.F., and is authorized to consist of appropriations from the General Revenue Fund and any gifts, grants, or funds received from other sources. The fund is statutorily required to be used exclusively for grants and contracts to qualified non-profit associations of governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of s. 1004.435, F.S., and programs funded through grants and contracts authorized by the Board of Education or the state surgeon general.[5]

The General Appropriations Act has never contained an appropriation for the Florida Cancer Control and Research Fund since the fund was created in 2002.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1004.435, F.S., to revise the membership of the CCRAB and reduce its membership from 35 to 15 members[6] consisting of:

[4] *See* s. 408.07(45), F.S. "Teaching hospital" means any Florida hospital officially affiliated with an accredited Florida medical school which participates in graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.
[5] *See* s. 1004.435(6), F.S.
[6] Organizations that are no longer included in council membership include: The Florida Tumor Registration Association, the Agency for Health Care Administration, the American College of Surgeons, the University of Miami College of Medicine, the University of Florida College of Medicine, the NOVA Southeastern College of Osteopathic Medicine, the University of South Florida College of Public Health, the Florida Society of Clinical Oncology, the Florida Obstetric and Gynecologic Society, the Florida Ovarian Cancer Alliance Speaks organization, the Florida Pediatric Society, the Florida Radiological Society, the Florida Society of Pathologists, the Florida Dental Association, the Association of Community Cancer Centers, the Florida Association of Pediatric Tumor Programs, Inc., a statutory teaching hospital affiliated with a community-based

- One member appointed by the state surgeon general;
- One member appointed by the chief executive officer (CEO), or the CEO's designee, from each of the following institutions:
  - The American Cancer Society;
  - The Sylvester Comprehensive Cancer Center of the University of Miami;
  - The University of Florida Shands Cancer Center;
  - The Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the CCRAB;
  - The Florida Osteopathic Medical Association who specializes in the field of oncology;
  - The Florida Medical Association (FMA) who is a member of the FMA, specializes in the field of oncology, and represents a cancer center not already represented on the CCRAB;
  - The H. Lee Moffitt Cancer Center and Research Institute;
  - The Florida Hospital Association (FHA) who specializes in the field of oncology, is a member of the FHA, and represents a comprehensive cancer center not already represented on the CCRAB; and
  - The Association of Community Cancer Centers.
- One member, appointed by the governor, who specializes in pediatric oncology;
- One member, appointed by the president of the Senate, who specializes in oncology clinical care and research;
- One member, appointed by the speaker of the House of Representatives, who is a current or former cancer patient or caregiver;
- One member of the House of Representatives appointed by the speaker of the House of Representatives; and,
- One member of the Senate, appointed by the president of the Senate.

Regarding CCRAB membership, the bill also provides that:
- At least four members must be minority persons;[7]
- A member's term is four years with the option of reappointment;
- Members of the CCRAB select the chairperson;
- Eight members constitute a quorum; and
- The institution that a member represents may reimburse that member for travel expenses, or if a member does not represent an institution, then Moffitt is required to reimburse that member for travel expenses.

The bill renames the "Florida Cancer Plan" that the CCRAB is required to approve each year, consisting of a program for cancer control and research, as the "Florida Cancer Control and Research Plan."

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cancer center, the Cancer Information Service, the Florida Agricultural and Mechanical University Institute of Public Health, and the Florida Society of Oncology Social Workers.

[7] Defined in s. 288.703, F.S., to mean a lawful, permanent resident of Florida who is an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; or, an American woman.

The bill requires that the CCRAB must collaborate with the Florida Biomedical Research Advisory Council to annually recommend to the state surgeon general a statewide research plan, in addition to the plan for the care and treatment of persons suffering from cancer that is required of the CCRAB under current law. The latter plan is named the "Florida Cancer Treatment Plan" under the bill.

The bill removes from statute:

- Requirements for the CCRAB to recommend the awarding of grants and contracts to qualified associations or government agencies;
- The CCRAB's duty to create summaries of the treatment options available to persons suffering from breast and prostate cancer;
- The authorization for the DOH to furnish financial aid to Florida citizens who are afflicted with cancer; and
- The Florida Cancer Control and Research Fund.

Sections 2 and 3 of the bill amend ss. 458.324 and 459.0125, F.S., to conform those sections to the changes made in Section 1 of the bill relating to summaries of treatment alternatives and to make other technical revisions.

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 734, organizations represented on the CCRAB may be required to pay their representative's travel expenses under the provisions of ss. 1004.435(4)(e) and 112.061, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In delineating the membership of the CCRAB, the bill indicates one member must be a member of the Florida Medical Association who represents a cancer center not already represented on the CCRAB. The bill also indicates one member must be a member of the Florida Hospital Association who represents a comprehensive cancer center not already represented on the CCRAB. The bill does not specify what differentiates a "cancer center" from a "comprehensive cancer center," and that differentiation is also not found under current law in s. 1004.435, F.S.

The bill's intent is not clear regarding the requirement that one CCRAB member be a "member of the Florida Hospital Association" (FHA). The FHA's membership is not composed of individual persons. Organizations such as hospitals and health systems constitute the membership of the FHA.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.324, 459.0125, and 1004.435.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 2, 2014:
The CS:

- Provides additional requirements for members of the CCRAB who represent the Florida Nurses Association, the Florida Medical Association, and the Florida Hospital Association;
- Renames the Florida Cancer Plan as the Florida Cancer Control and Research Plan;
- Requires the CCRAB to collaborate with the Florida Biomedical Research Advisory Council to recommend to the state surgeon general a statewide research plan; and
- Requires that the statewide research plan must be reviewed and recommended annually.

B. Amendments:

None.

951274

576-03667-14

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

A bill to be entitled

An act relating to cancer control and research; amending s. 1004.435, F.S.; revising definitions; revising the membership of the Florida Cancer Control and Research Advisory Council and selection of the council chairperson; authorizing renewal of member terms; revising compensation of council members; renaming the Florida Cancer Plan; requiring the council to collaborate with the Florida Biomedical Research Advisory Council to formulate and review a statewide research plan; requiring the council to develop and review a statewide treatment plan; deleting council, Board of Governors, and State Surgeon General duties relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund; amending ss. 458.324 and 459.0125, F.S.; conforming provisions; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (3) and subsections (4), (5), and (6) of section 1004.435, Florida Statutes, are amended to read:

951274

576-03667-14

1004.435 Cancer control and research.—

(3) DEFINITIONS.—The following words and phrases when used in this section have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

~~(d) "Fund" means the Florida Cancer Control and Research Fund established by this section.~~

~~(e) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.~~

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 15 ~~35~~ members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the Department of Health shall be one of the 15 members. ~~All~~ Members, except those appointed by the Governor, the Speaker of the House of Representatives, or ~~and~~ the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee ~~Governor~~. ~~At least one of the members appointed by the Governor must be 60 years of age or older.~~ One member must be a representative of the American Cancer Society; ~~one member must be a representative of the Florida Tumor Registrars Association;~~ one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; ~~one member must be a representative of the Department of Health;~~ one member must be a representative of

the University of Florida Shands Cancer Center; ~~one member must be a representative of the Agency for Health Care Administration;~~ one member must be a representative of the Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the council; one member must be a representative of the Florida Osteopathic Medical Association who specializes in the field of oncology; ~~one member must be a representative of the American College of Surgeons; one member must be a representative of the School of Medicine of the University of Miami; one member must be a representative of the College of Medicine of the University of Florida; one member must be a representative of NOVA Southeastern College of Osteopathic Medicine; one member must be a representative of the College of Medicine of the University of South Florida; one member must be a representative of the College of Public Health of the University of South Florida; one member must be a representative of the Florida Society of Clinical Oncology; one member must be a representative of the Florida Obstetric and Gynecologic Society who has had training in the specialty of gynecologic oncology; one member must be a representative of the Florida Ovarian Cancer Alliance Speaks (FOCAS) organization;~~ one member must be a member ~~representative~~ of the Florida Medical Association who specializes in the field of oncology and who represents a cancer center not already represented on the council; ~~one member must be a member of the Florida Pediatric Society; one member must be a representative of the Florida Radiological Society; one member must be a representative of the Florida Society of Pathologists;~~ one member must be a

representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a member of the Florida Hospital Association who specializes in the field of oncology and who represents a comprehensive cancer center not already represented on the council; one member must be a representative of the Association of Community Cancer Centers; one member must specialize in pediatric oncology research or clinical care appointed by the Governor; one member must specialize in oncology clinical care or research appointed by the President of the Senate; one member must be a current or former cancer patient or a current or former caregiver to a cancer patient appointed by the Speaker of the House of Representatives ~~three members must be representatives of the general public acting as consumer advocates~~; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate~~; one member must be a representative of the Florida Dental Association; one member must be a representative of the Florida Hospital Association; one member must be a representative of the Association of Community Cancer Centers; one member shall be a representative from a statutory teaching hospital affiliated with a community-based cancer center; one member must be a representative of the Florida Association of Pediatric Tumor Programs, Inc.; one member must be a representative of the Cancer Information Service; one member must be a representative of the Florida Agricultural and Mechanical University Institute of Public Health; and one member must be a representative of the Florida Society of Oncology Social Workers~~. ~~Of the members of the~~

~~council appointed by the Governor,~~ At least four of the members ~~10~~ must be individuals who are minority persons as defined by s. 288.703.

(b) The terms of the members shall be 4 years from their respective dates of appointment with the option of renewal.

(c) A chairperson shall be selected by the council ~~appointed by the Governor~~ for a term of 2 years. The chairperson shall appoint an executive committee of no fewer than three persons to serve at the pleasure of the chairperson. This committee will prepare material for the council but make no final decisions.

(d) The council shall meet no less than semiannually at the call of the chairperson or, in his or her absence or incapacity, at the call of the State Surgeon General. Eight ~~Sixteen~~ members constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

(e) The council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members may be entitled to be reimbursed for ~~per diem and~~ travel expenses by the institution or organization the member represents. If a member is not affiliated with an institution or organization, the member shall be reimbursed for travel expenses by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

~~(f) No member of the council shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with which the member is associated as a member of the governing body or as an employee~~

~~or with which the member has entered into a contractual arrangement.~~

(f) ~~(g)~~ The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.

(g) ~~(h)~~ The council shall advise the Board of Governors, the State Surgeon General, and the Legislature with respect to cancer control and research in this state.

(h) ~~(i)~~ The council shall approve each year a program for cancer control and research to be known as the "Florida Cancer Control and Research Plan" which shall be consistent with the State Health Plan and integrated and coordinated with existing programs in this state.

(i) ~~(j)~~ The council shall collaborate with the Florida Biomedical Research Advisory Council to formulate and annually review and recommend to the State Surgeon General a statewide research plan. Additionally, the council shall develop and annually review a statewide "Florida Cancer Treatment Plan" ~~plan~~ for the care and treatment of persons suffering from cancer. The council shall ~~and~~ recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state. The council may recommend to the State Surgeon General the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The State Surgeon General shall consider the plans ~~plan~~ in developing departmental priorities and funding priorities and standards under chapter 395.

(j) ~~(k)~~ The council is responsible for including in the

Florida Cancer Control and Research Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. Committees shall be formed by the council so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.

2. Cancer prevention.

3. Cancer detection.

4. Cancer patient management: treatment, rehabilitation, terminal care, and other patient-oriented activities.

5. Cancer education: lay and professional.

6. Unproven methods of cancer therapy: quackery and unorthodox therapies.

7. Investigator-initiated project research.

~~(l) In order to implement in whole or in part the Florida Cancer Plan, the council shall recommend to the Board of Governors or the State Surgeon General the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.~~

~~(m) If funds are specifically appropriated by the Legislature, the council shall develop or purchase standardized written summaries, written in layperson's terms and in language easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the~~

~~medically viable treatment alternatives available to them in the effective management of breast cancer and prostate cancer; describing such treatment alternatives; and explaining the relative advantages, disadvantages, and risks associated therewith. The breast cancer summary, upon its completion, shall be printed in the form of a pamphlet or booklet and made continuously available to physicians and surgeons in this state for their use in accordance with s. 458.324 and to osteopathic physicians in this state for their use in accordance with s. 459.0125. The council shall periodically update both summaries to reflect current standards of medical practice in the treatment of breast cancer and prostate cancer. The council shall develop and implement educational programs, including distribution of the summaries developed or purchased under this paragraph, to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer and prostate cancer.~~

(k) ~~(n)~~ The council shall have the responsibility to advise the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(l) ~~(o)~~ The council may recommend to the Board of Governors or the State Surgeon General rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(m) ~~(p)~~ The council shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper

treatment of cancer.

(n) ~~(q)~~ The council shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., at the University of South Florida.

(o) ~~(r)~~ The council shall select, by majority vote, seven members of the council who must combine with six members of the Biomedical Research Advisory Council to form a joint committee to develop performance measures, a rating system, a rating standard, and an application form for the Cancer Center of Excellence Award created in s. 381.925.

(p) ~~(s)~~ On February 15 of each year, the council shall report to the Governor and to the Legislature.

(5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.~~, AND THE STATE SURGEON GENERAL.~~

~~(a) The Board of Governors or the State Surgeon General, after consultation with the council, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.~~

~~(b)~~ The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall provide such staff, information, and other assistance as reasonably necessary for the completion of the responsibilities of the council.

~~(c) The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and~~

~~may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.~~

~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.—~~

~~(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the General Revenue Fund and any gifts, grants, or funds received from other sources.~~

~~(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the State Board of Education or the State Surgeon General.~~

Section 2. Subsections (1) and (2) of section 458.324, Florida Statutes, are amended to read:

458.324 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) Each physician treating a patient who is, or in the

judgment of the physician is at high risk of being, diagnosed as having breast cancer shall inform such patient of the medically viable treatment alternatives available to such patient; shall describe such treatment alternatives; and shall explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, in his or her discretion, ~~:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express a willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall take into consideration the emotional state of the patient, the physical state of the patient, and the patient's ability to understand the information.

(c) The physician may, in his or her discretion and without restriction, recommend any mode of treatment which is in his or her judgment the best treatment for the patient.

Nothing in this subsection shall reduce other provisions of law

regarding informed consent.

Section 3. Subsections (1) and (2) of section 459.0125, Florida Statutes, are amended to read:

459.0125 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) It is the obligation of every physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer to inform such patient of the medically viable treatment alternatives available to such patient; to describe such treatment alternatives; and to explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, in her or his discretion, ~~:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express her or his~~

~~willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall take into consideration the emotional state of the patient, the physical state of the patient, and the patient's ability to understand the information.

(c) The physician may, in her or his discretion and without restriction, recommend any mode of treatment which is in the physician's judgment the best treatment for the patient.

Nothing in this subsection shall reduce other provisions of law regarding informed consent.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 734
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senators Sobel and Abruzzo
SUBJECT:	Cancer Control and Research
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.	Brown/Loe	Pigott	AHS	**Fav/CS**
3.	Brown/Loe	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 734 reduces the number of members of the Cancer Control and Research Advisory Council (CCRAB) from 35 to 15 and revises which organizations are represented on the CCRAB, as well as how CCRAB members and the chairperson of the CCRAB are appointed. The bill also revises the duties of the CCRAB by eliminating the CCRAB's responsibility for recommending the awarding of grants and contracts to private entities and government agencies for cancer control, prevention, education, or research. The bill requires the CCRAB to recommend to the state surgeon general a statewide research plan.

The bill has no fiscal impact.

II. Present Situation:

The Florida Cancer Control and Research Advisory Council was established by the Legislature in 1979 to advise the Legislature, governor, and state surgeon general on how to reduce the cancer burden in Florida.[1] The CCRAB is housed within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt).[2] The CCRAB:

[1] Florida Cancer Control and Research Advisory Council, *What is CCRAB?*, found at http://www.ccrab.org/, last visited on March 7, 2014.
[2] *See* s. 1004.435(4), F.S.

- Advises the Board of Governors, the state surgeon general, and the Legislature on cancer control and research in Florida;
- Annually approves the Florida Cancer Plan;
- Provides recommendations for the Florida Cancer Plan to include the coordination and integration of plans concerned with cancer control and research provided by other stakeholders;
- Formulates and recommends to the state surgeon general:
  - A plan for the care and treatment of persons suffering from cancer,
  - Standard requirements for organization, equipment, and conduct of cancer units or departments in hospitals and clinics, and
  - The designation of cancer units following a survey of needs and facilities for treatment of cancer throughout the state;
- Recommends grant awards and contracts to qualified recipients;[3]
- Develops educational materials and programs; and
- Recommends rules and methods of implementing or enforcing laws concerned with cancer control, research, and education.

The CCRAB consists of 35 members, including appointees by the speaker of the House of Representatives, the president of the Senate, the governor, and other persons. Members represent:

- American Cancer Society,
- Florida Tumor Registrars Association,
- Sylvester Comprehensive Cancer Center of the University of Miami,
- Department of Health (DOH),
- University of Florida Shands Cancer Center,
- Agency for Health Care Administration,
- Florida Nurses Association,
- Florida Osteopathic Medical Association,
- American College of Surgeons,
- School of Medicine of the University of Miami,
- College of Medicine of the University of Florida,
- Nova Southeastern University College of Osteopathic Medicine,
- College of Medicine of the University of South Florida,
- College of Public Health of the University of South Florida,
- Florida Society of Clinical Oncology,
- Florida Obstetric and Gynecologic Society,
- Florida Ovarian Cancer Alliance Speaks,
- Florida Medical Association,
- Florida Pediatric Society,
- Florida Radiological Society,
- Florida Society of Pathologists,
- Moffitt,

[3] According to a phone conversation with Susan Fleming at the DOH on Mar. 10, 2014, the Florida Cancer Control Research Fund, from which the council was supposed to grant the awards and contracts, was never implemented or funded.

- Florida Dental Association,
- Florida Hospital Association,
- Association of Community Cancer Centers,
- Statutory teaching hospitals,[4]
- Florida Association of Pediatric Tumor Programs, Inc.,
- Cancer Information Services,
- Florida Agricultural and Mechanical University Institute of Public Health,
- Florida Society of Oncology Social Workers, and
- Consumer advocates from the general public.

In 2013, the Legislature passed 2013-50, L.O.F., which created the Cancer Center of Excellence Award and amended s. 1004.435(4), F.S., to require the CCRAB, along with the Biomedical Research Advisory Council (BRAC), to develop performance measures, a rating system, a rating standard, and an application for the Cancer Center of Excellence Award. The CCRAB is required to select by majority vote seven members to form a joint committee with six members of the BRAC in order to implement the Cancer Center of Excellence Award.

The Florida Cancer Control and Research Fund

The Florida Cancer Control and Research Fund is not an official trust fund of the state of Florida. The fund was created by ch. 2002-387, L.O.F., and is authorized to consist of appropriations from the General Revenue Fund and any gifts, grants, or funds received from other sources. The fund is statutorily required to be used exclusively for grants and contracts to qualified non-profit associations of governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of s. 1004.435, F.S., and programs funded through grants and contracts authorized by the Board of Education or the state surgeon general.[5]

The General Appropriations Act has never contained an appropriation for the Florida Cancer Control and Research Fund since the fund was created in 2002.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 1004.435, F.S., to revise the membership of the CCRAB and reduce its membership from 35 to 15 members[6] consisting of:

[4] *See* s. 408.07(45), F.S. "Teaching hospital" means any Florida hospital officially affiliated with an accredited Florida medical school which participates in graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.
[5] *See* s. 1004.435(6), F.S.
[6] Organizations that are no longer included in council membership include: The Florida Tumor Registration Association, the Agency for Health Care Administration, the American College of Surgeons, the University of Miami College of Medicine, the University of Florida College of Medicine, the NOVA Southeastern College of Osteopathic Medicine, the University of South Florida College of Public Health, the Florida Society of Clinical Oncology, the Florida Obstetric and Gynecologic Society, the Florida Ovarian Cancer Alliance Speaks organization, the Florida Pediatric Society, the Florida Radiological Society, the Florida Society of Pathologists, the Florida Dental Association, the Association of Community Cancer Centers, the Florida Association of Pediatric Tumor Programs, Inc., a statutory teaching hospital affiliated with a community-based

- One member appointed by the state surgeon general;
- One member appointed by the chief executive officer (CEO), or the CEO's designee, from each of the following institutions:
  - The American Cancer Society;
  - The Sylvester Comprehensive Cancer Center of the University of Miami;
  - The University of Florida Shands Cancer Center;
  - The Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the CCRAB;
  - The Florida Osteopathic Medical Association who specializes in the field of oncology;
  - The Florida Medical Association (FMA) who is a member of the FMA, specializes in the field of oncology, and represents a cancer center not already represented on the CCRAB;
  - The H. Lee Moffitt Cancer Center and Research Institute;
  - The Florida Hospital Association (FHA) who specializes in the field of oncology, is a member of the FHA, and represents a comprehensive cancer center not already represented on the CCRAB; and
  - The Association of Community Cancer Centers.
- One member, appointed by the governor, who specializes in pediatric oncology;
- One member, appointed by the president of the Senate, who specializes in oncology clinical care and research;
- One member, appointed by the speaker of the House of Representatives, who is a current or former cancer patient or caregiver;
- One member of the House of Representatives appointed by the speaker of the House of Representatives; and,
- One member of the Senate, appointed by the president of the Senate.

Regarding CCRAB membership, the bill also provides that:
- At least four members must be minority persons;[7]
- A member's term is four years with the option of reappointment;
- Members of the CCRAB select the chairperson;
- Eight members constitute a quorum; and
- The institution that a member represents may reimburse that member for travel expenses, or if a member does not represent an institution, then Moffitt is required to reimburse that member for travel expenses.

The bill renames the "Florida Cancer Plan" that the CCRAB is required to approve each year, consisting of a program for cancer control and research, as the "Florida Cancer Control and Research Plan."

cancer center, the Cancer Information Service, the Florida Agricultural and Mechanical University Institute of Public Health, and the Florida Society of Oncology Social Workers.

[7] Defined in s. 288.703, F.S., to mean a lawful, permanent resident of Florida who is an African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin; a Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race; an Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778; a Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; or, an American woman.

The bill requires that the CCRAB must collaborate with the Florida Biomedical Research Advisory Council to annually recommend to the state surgeon general a statewide research plan, in addition to the plan for the care and treatment of persons suffering from cancer that is required of the CCRAB under current law. The latter plan is named the "Florida Cancer Treatment Plan" under the bill.

The bill removes from statute:

- Requirements for the CCRAB to recommend the awarding of grants and contracts to qualified associations or government agencies;
- The CCRAB's duty to create summaries of the treatment options available to persons suffering from breast and prostate cancer;
- The authorization for the DOH to furnish financial aid to Florida citizens who are afflicted with cancer; and
- The Florida Cancer Control and Research Fund.

Sections 2 and 3 of the bill amend ss. 458.324 and 459.0125, F.S., to conform those sections to the changes made in Section 1 of the bill relating to summaries of treatment alternatives and to make other technical revisions.

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 734, organizations represented on the CCRAB may be required to pay their representative's travel expenses under the provisions of ss. 1004.435(4)(e) and 112.061, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In delineating the membership of the CCRAB, the bill indicates one member must be a member of the Florida Medical Association who represents a cancer center not already represented on the CCRAB. The bill also indicates one member must be a member of the Florida Hospital Association who represents a comprehensive cancer center not already represented on the CCRAB. The bill does not specify what differentiates a "cancer center" from a "comprehensive cancer center," and that differentiation is also not found under current law in s. 1004.435, F.S.

The bill's intent is not clear regarding the requirement that one CCRAB member be a "member of the Florida Hospital Association" (FHA). The FHA's membership is not composed of individual persons. Organizations such as hospitals and health systems constitute the membership of the FHA.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.324, 459.0125, and 1004.435.

IX. Additional Information:

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

CS by Appropriations on April 24, 2014:
The CS:

- Provides additional requirements for members of the CCRAB who represent the Florida Nurses Association, the Florida Medical Association, and the Florida Hospital Association;
- Renames the Florida Cancer Plan as the Florida Cancer Control and Research Plan;
- Requires the CCRAB to collaborate with the Florida Biomedical Research Advisory Council to recommend to the state surgeon general a statewide research plan; and
- Requires that the statewide research plan must be reviewed and recommended annually.

B. Amendments:

None.

By Senator Sobel

33-00984-14 2014734__

A bill to be entitled

An act relating to cancer control and research; amending s. 1004.435, F.S.; revising definitions; revising the membership of the Florida Cancer Control and Research Advisory Council; requiring that the council chairperson be selected by the council; authorizing renewal of member terms; revising the compensation of council members; requiring a statewide research plan; deleting the duties of the council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs; deleting council duties relating to the development of written summaries of treatment alternatives; deleting financial aid provisions and the Florida Cancer Control and Research Fund; amending ss. 458.324, and 459.0125, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (3) and subsections (4) through (6) of section 1004.435, Florida Statutes, are amended to read:

1004.435 Cancer control and research.—

(3) DEFINITIONS.—The following words and phrases when used in this section have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

~~(d) "Fund" means the Florida Cancer Control and Research Fund established by this section.~~

~~(e) "Qualified nonprofit association" means any association, incorporated or unincorporated, that has received tax-exempt status from the Internal Revenue Service.~~

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 15 ~~35~~ members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the Department of Health shall be one of the 15 members. ~~All~~ Members, except those appointed by the Governor, the Speaker of the House of Representatives, or ~~and~~ the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee ~~Governor~~. ~~At least one of the members appointed by the Governor must be 60 years of age or older.~~ One member must be a representative of the American Cancer Society; ~~one member must be a representative of the Florida Tumor Registrars Association;~~ one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; ~~one member must be a representative of the Department of Health;~~ one member must be a representative of the University of Florida Shands Cancer Center; ~~one member must be a representative of the Agency for Health Care Administration;~~ one member must be a representative of the Florida Nurses Association who specializes in the field of oncology; one member must be a representative of the Florida

Osteopathic Medical Association who specializes in the field of oncology; ~~one member must be a representative of the American College of Surgeons; one member must be a representative of the School of Medicine of the University of Miami; one member must be a representative of the College of Medicine of the University of Florida; one member must be a representative of NOVA Southeastern College of Osteopathic Medicine; one member must be a representative of the College of Medicine of the University of South Florida; one member must be a representative of the College of Public Health of the University of South Florida; one member must be a representative of the Florida Society of Clinical Oncology; one member must be a representative of the Florida Obstetric and Gynecologic Society who has had training in the specialty of gynecologic oncology; one member must be a representative of the Florida Ovarian Cancer Alliance Speaks (FOCAS) organization;~~ one member must be a representative of the Florida Medical Association who specializes in the field of oncology; ~~one member must be a member of the Florida Pediatric Society; one member must be a representative of the Florida Radiological Society; one member must be a representative of the Florida Society of Pathologists;~~ one member must be a representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a representative of the Florida Hospital Association who specializes in the field of oncology; one member must be a representative of the Association of Community Cancer Centers; one member, who shall be appointed by the Governor, must specialize in pediatric oncology research or clinical care; one member, who shall be appointed by the President of the Senate, must specialize in oncology clinical

care or research; one member, who shall be appointed by the Speaker of the House of Representatives, must be a current or former cancer patient or a current or former caregiver to a cancer patient ~~three members must be representatives of the general public acting as consumer advocates~~; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate~~;~~ ~~one member must be a representative of the Florida Dental Association; one member must be a representative of the Florida Hospital Association; one member must be a representative of the Association of Community Cancer Centers; one member shall be a representative from a statutory teaching hospital affiliated with a community-based cancer center; one member must be a representative of the Florida Association of Pediatric Tumor Programs, Inc.; one member must be a representative of the Cancer Information Service; one member must be a representative of the Florida Agricultural and Mechanical University Institute of Public Health; and one member must be a representative of the Florida Society of Oncology Social Workers. Of the members of the council appointed by the Governor,~~ At least four members ~~10~~ must be individuals who are minority persons as defined under ~~by~~ s. 288.703.

(b) The terms of the members shall be 4 years from their respective dates of appointment with the option of reappointment.

(c) A chairperson shall be selected by the council ~~appointed by the Governor~~ for a term of 2 years. The chairperson shall appoint an executive committee of at least ~~no fewer than~~

three persons to serve at the pleasure of the chairperson. This committee shall ~~will~~ prepare material for the council but make no final decisions.

(d) The council shall meet at least ~~no less than~~ semiannually at the call of the chairperson or, in his or her absence or incapacity, at the call of the State Surgeon General. Eight ~~Sixteen~~ members constitute a quorum for the purpose of exercising ~~all of~~ the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

(e) The council members ~~shall~~ serve without pay. Pursuant to ~~the provisions of~~ s. 112.061, a ~~the~~ council member ~~members~~ may be entitled to be reimbursed for ~~per diem and~~ travel expenses by the institution or organization he or she represents. A member who is not affiliated with an institution or organization shall be reimbursed for travel expenses by the H. Lee Moffitt Cancer Center and Research Institute, Inc.

~~(f) No member of the council shall participate in any discussion or decision to recommend grants or contracts to any qualified nonprofit association or to any agency of this state or its political subdivisions with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.~~

(f) ~~(g)~~ The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.

(g) ~~(h)~~ The council shall advise the Board of Governors, the State Surgeon General, and the Legislature with respect to

cancer control and research in this state.

(h) ~~(i)~~ The council shall annually approve ~~each year~~ a program for cancer control and research to be known as the "Florida Cancer Plan," which shall be consistent with the State Health Plan and integrated and coordinated with existing programs in this state.

(i) ~~(j)~~ The council shall formulate and recommend to the State Surgeon General a statewide research plan and a plan for the care and treatment of persons suffering from cancer and shall recommend the establishment of standard requirements for the organization, equipment, and conduct of cancer units or departments in hospitals and clinics in this state. The council may recommend to the State Surgeon General the designation of cancer units following a survey of the needs and facilities for treatment of cancer in the various localities throughout the state. The State Surgeon General shall consider the plan in developing departmental priorities and funding priorities and standards under chapter 395.

(j) ~~(k)~~ The council shall include ~~is responsible for including~~ in the Florida Cancer Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. The council shall form committees ~~shall be formed by the council~~ so that the following areas will be established as entities for actions:

1. Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas.

2. Cancer prevention.

3. Cancer detection.

4. Cancer patient management, including~~:~~ treatment, rehabilitation, terminal care, and other patient-oriented activities.

5. Lay and professional cancer education~~: lay and professional~~.

6. Unproven methods of cancer therapy, including~~:~~ quackery and unorthodox therapies.

7. Investigator-initiated project research.

~~(l) In order to implement in whole or in part the Florida Cancer Plan, the council shall recommend to the Board of Governors or the State Surgeon General the awarding of grants and contracts to qualified profit or nonprofit associations or governmental agencies in order to plan, establish, or conduct programs in cancer control or prevention, cancer education and training, and cancer research.~~

~~(m) If funds are specifically appropriated by the Legislature, the council shall develop or purchase standardized written summaries, written in layperson's terms and in language easily understood by the average adult patient, informing actual and high-risk breast cancer patients, prostate cancer patients, and men who are considering prostate cancer screening of the medically viable treatment alternatives available to them in the effective management of breast cancer and prostate cancer; describing such treatment alternatives; and explaining the relative advantages, disadvantages, and risks associated therewith. The breast cancer summary, upon its completion, shall be printed in the form of a pamphlet or booklet and made continuously available to physicians and surgeons in this state for their use in accordance with s. 458.324 and to osteopathic physicians in this state for their use in accordance with s. 459.0125. The council shall periodically update both summaries to reflect current standards of medical practice in the treatment of breast cancer and prostate cancer. The council shall develop and implement educational programs, including distribution of the summaries developed or purchased under this paragraph, to inform citizen groups, associations, and voluntary organizations about early detection and treatment of breast cancer and prostate cancer.~~

(k) ~~(n)~~ The council shall ~~have the responsibility to~~ advise the Board of Governors and the State Surgeon General on methods of enforcing and implementing laws already enacted and concerned with cancer control, research, and education.

(l) ~~(o)~~ The council may recommend to the Board of Governors or the State Surgeon General rules not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of this section.

(m) ~~(p)~~ The council shall formulate and put into effect a continuing educational program for the prevention of cancer and its early diagnosis and disseminate to hospitals, cancer patients, and the public information concerning the proper treatment of cancer.

(n) ~~(q)~~ The council shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., at the University of South Florida.

(o) ~~(r)~~ The council shall select, by majority vote, seven members of the council who, ~~must combine~~ with six members of the Biomedical Research Advisory Council, shall ~~to~~ form a joint

committee to develop performance measures, a rating system, a rating standard, and an application form for the Cancer Center of Excellence Award created in s. 381.925.

(p) ~~(s) On February 15 of each year,~~ The council shall report to the Governor and ~~to~~ the Legislature on February 15 of each year.

(5) RESPONSIBILITIES OF ~~THE BOARD OF GOVERNORS,~~ THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.~~, AND THE STATE SURGEON GENERAL.~~

~~(a) The Board of Governors or the State Surgeon General, after consultation with the council, shall award grants and contracts to qualified nonprofit associations and governmental agencies in order to plan, establish, or conduct programs in cancer control and prevention, cancer education and training, and cancer research.~~

~~(b)~~ The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall provide such staff, information, and other assistance as reasonably necessary for the completion of the responsibilities of the council.

~~(c) The department may furnish to citizens of this state who are afflicted with cancer financial aid to the extent of the appropriation provided for that purpose in a manner which in its opinion will afford the greatest benefit to those afflicted and may make arrangements with hospitals, laboratories, or clinics to afford proper care and treatment for cancer patients in this state.~~

~~(6) FLORIDA CANCER CONTROL AND RESEARCH FUND.~~

~~(a) There is created the Florida Cancer Control and Research Fund consisting of funds appropriated therefor from the~~

~~General Revenue Fund and any gifts, grants, or funds received from other sources.~~

~~(b) The fund shall be used exclusively for grants and contracts to qualified nonprofit associations or governmental agencies for the purpose of cancer control and prevention, cancer education and training, cancer research, and all expenses incurred in connection with the administration of this section and the programs funded through the grants and contracts authorized by the State Board of Education or the State Surgeon General.~~

Section 2. Subsections (1) and (2) of section 458.324, Florida Statutes, are amended to read:

458.324 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term "medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) Each physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer shall inform such patient of the medically viable treatment alternatives available to such patient; shall describe such treatment alternatives; and shall explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to

allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may~~, in his or her discretion:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express a willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall consider ~~take into consideration~~ the emotional and physical state of the patient~~, the physical state of the patient,~~ and the patient's ability to understand the information.

(c) The physician may, ~~in his or her discretion and~~ without restriction, recommend any mode of treatment which is in his or her judgment the best treatment for the patient.

~~Nothing in~~ This subsection does not ~~shall~~ reduce other provisions of law regarding informed consent.

Section 3. Subsections (1) and (2) of section 459.0125, Florida Statutes, are amended to read:

459.0125 Breast cancer; information on treatment alternatives.—

(1) DEFINITION.—As used in this section, the term

"medically viable," as applied to treatment alternatives, means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards~~, including treatment alternatives described in the written summary prepared by the Florida Cancer Control and Research Advisory Council in accordance with s. 1004.435(4)(m)~~.

(2) COMMUNICATION OF TREATMENT ALTERNATIVES.—

(a) It is the obligation of every physician treating a patient who is, or in the judgment of the physician is at high risk of being, diagnosed as having breast cancer to inform such patient of the medically viable treatment alternatives available to such patient; to describe such treatment alternatives; and to explain the relative advantages, disadvantages, and risks associated with the treatment alternatives to the extent deemed necessary to allow the patient to make a prudent decision regarding such treatment options. In compliance with this subsection, ~~:~~

~~(a)~~ the physician may, ~~in her or his discretion:~~

~~1.~~ orally communicate such information directly to the patient or the patient's legal representative~~;~~

~~2. Provide the patient or the patient's legal representative with a copy of the written summary prepared in accordance with s. 1004.435(4)(m) and express her or his willingness to discuss the summary with the patient or the patient's legal representative; or~~

~~3. Both communicate such information directly and provide a copy of the written summary to the patient or the patient's legal representative for further consideration and possible later discussion~~.

(b) In providing such information, the physician shall consider ~~take into consideration~~ the emotional and physical state of the patient~~, the physical state of the patient,~~ and the patient's ability to understand the information.

(c) The physician may, ~~in her or his discretion and~~ without restriction, recommend any mode of treatment which is in the physician's judgment the best treatment for the patient.

~~Nothing in~~ This subsection does not ~~shall~~ reduce other provisions of law regarding informed consent.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

April 2, 2014

Senator Negron, Chair
Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Negron:

This letter is to request that **SB 734** relating to the **Florida Cancer Control and Research Advisory Council (CCRAB)** be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would **revise the membership of the Florida Cancer Control and Research Advisory Council (15 from 35 to reach a quorum)**. It also requires a statewide research plan. Further, it deletes the duties of the Council, Board of Governors, and State Surgeon General relating to the awarding of grants and contracts for cancer-related programs, and deletes the Council duties relating to the development of written summaries of treatment alternatives. Lastly, it deletes the financial aid provisions and the Florida Cancer Control and Research Fund.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel

Eleanor Sobel
State Senator, 33rd District

Cc: Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 746
INTRODUCER:	Community Affairs Committee; Criminal Justice Committee; Health Policy Committee; and Senator Sobel
SUBJECT:	Health Care Clinic Act
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Sumner	Cannon	CJ	**Fav/CS**
3.	Stearns	Yeatman	CA	**Fav/CS**
4.	Brown/Forbes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 746 amends the definition of "clinic" within the Health Care Clinic Act to include any entity that "receives remuneration" rather than entities that "tender charges for reimbursement." The bill also makes clinics subject to additional inspections, administrative penalties,[1] and any applicable criminal penalties if an inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked or the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic. The bill exempts certain federally certified clinics from licensure under the act.

The bill is estimated to have a net recurring negative fiscal impact of approximately $69,000 to the Agency for Health Care Administration's (AHCA) Health Care Trust Fund. The net impact results from an estimate of approximately $176,000 of additional annual revenue for the trust fund and the need for $245,000 of recurring expenditures from the trust fund for four full-time equivalent positions to implement the bill.

[1] See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to $5,000 for violations of the Health Care Clinic Act.

II. Present Situation:

Part X of ch. 400, F.S., is known as the Health Care Clinic Act (the Act). The purpose of the Act is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration (AHCA).

Health care clinics in the state must be licensed by the AHCA;[2] however, there are numerous exclusions from the definition of "clinic" in s. 400.9905, F.S.,[3] and from the requirement to obtain a license as a clinic. The definition of "clinic" includes only entities that "tender charges for reimbursement." The AHCA interprets this phrase to solely include entities that bill third parties, such as Medicare, Medicaid, and insurance companies. Entities that provide health care services on a "cash only" basis are excluded from the definition of "clinic" and, as such, need not be licensed by the AHCA.[4]

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to broaden the definition of "clinic" to include any entity that "receives remuneration" rather than entities that "tender charges for reimbursement." The effect of this change is to require "cash only" clinics to obtain a license as a clinic and, as a result, these facilities will be subject to periodic inspections. The bill exempts clinics subject to federal licensure requirements under 42 C.F.R. part 485, subpart H.

Section 2 amends s. 400.995, F.S., to subject clinics to additional inspections, administrative penalties,[5] licensure suspension or revocation, any applicable criminal penalties[6] or any combination thereof if:

- An inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked; or
- The licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

Section 3 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[2] Section 400.991, F.S.
[3] Section 400.9905(4)(a)-(n), F.S.
[4] See the AHCA's bill analysis for SB 746 (January 28, 2014) on file with staff of the Committee on Appropriations.
[5] See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to $5,000 for violations of the Health Care Clinic Act.
[6] The criminal penalties are not specified, however, these penalties could include a felony of the third degree imposed by s. 458.327(1)(b), F.S., on physicians who attempt to use a license which is suspended or revoked to practice medicine.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under CS/CS/CS/SB 746, "cash only" clinics that are not currently licensed will be required to obtain a license from the AHCA and pay a $2,000 licensing fee in order to continue operating legally.

B. Private Sector Impact:

"Cash only" clinics that are not currently licensed will incur the $2,000 licensing fee if they choose to seek licensure. Also, clinics that hire or continue to employ a physician whose license is suspended or revoked may be required to pay a fine of up to $5,000.

C. Government Sector Impact:

The AHCA anticipates a recurring increase in licensing fee revenue of approximately $176,000 under the bill that will be deposited into the Health Care Trust Fund.

The AHCA anticipates the licensure workload will increase by 10 percent requiring 4 FTE positions to manage the program. The licensure fees will substantially cover the increased workload costs. Existing resources can absorb the difference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905 and 400.995.

IX. Additional Information:

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

CS/CS/CS by Community Affairs on April 8, 2014:
The CS exempts certain federally certified clinics from the licensure requirements of the bill.

CS/CS by Criminal Justice on March 24, 2014:
The CS subjects clinics to additional inspections and licensure suspension or revocation (or any combination of penalties including administrative and criminal penalties) if an inspection or investigation reveals that the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

CS by Health Policy on March 11, 2014:
The CS provides that only clinics that hire or continues to employ, directly or contractually, a physician whose license is suspended or revoked, are liable for sanctions or criminal penalties.

B. Amendments:

None.

By the Committees on Community Affairs; Criminal Justice; and Health Policy; and Senator Sobel

578-04053-14 2014746c3

A bill to be entitled

An act relating to the Health Care Clinic Act; amending s. 400.9905, F.S.; redefining the term "clinic"; exempting certain federally certified clinics from licensure under the act; amending s. 400.995, F.S.; providing that a clinic is subject to penalties if it engages physicians whose licenses have been suspended or revoked; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity that provides ~~where~~ health care services ~~are provided~~ to individuals and that receives remuneration ~~which tenders charges for reimbursement~~ for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42

578-04053-14 2014746c3

C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part

405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, a ~~any~~ community college or university clinic, and an ~~any~~ entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

(f) A sole proprietorship, group practice, partnership, or

corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

(h) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(i) Entities that provide only oncology or radiation

therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

(j) Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

(k) Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure under this paragraph must provide documentation demonstrating compliance.

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

(m) Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who

is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

(n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must ~~shall~~ contain information that includes: the name, residence, and business address and phone number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under personal injury protection insurance coverage for the preceding year. If the agency determines that an entity which is exempt under this subsection has received payments for medical services under personal injury protection insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

Notwithstanding this subsection, an entity shall be deemed a

clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h) or, as a provider certified pursuant to 42 C.F.R. part 485, subpart H, exempted under this subsection before July 1, 2014. However, if a single legal entity owned a clinic that is exempt under this subsection before July 1, 2014, the exemption extends beyond that date to other clinics owned by that entity which are certified under 42 C.F.R. part 485, subpart H.

Section 2. Present subsection (6) of section 400.995, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

400.995 Agency administrative penalties.—

(6) A clinic is subject to additional inspections, administrative penalties, licensure suspension or revocation, applicable criminal penalties, or any combination of the above if:

(a) An inspection or investigation reveals that the clinic hired or continues to directly or contractually engage a physician whose license is suspended or revoked; or

(b) The licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic.

Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

SENATOR ELEANOR SOBEL
33rd District

April 16 2014

Senator Joe Negron, Chair
Appropriations
412 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Negron:

This letter is to request that SB 746 relating to Health Care Clinics be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would change the language of F.S. 400.9905, so that facilities that accept cash only would also be included in the definition of health care clinics. The current language leaves these facilities out, creating a perverse situation whereby employees of such facilities can prescribe illegal amounts of anabolic steroids and HGH with impunity. This bill would mean that such facilities would be subject to the same regulations, inspections, and penalties as other health care clinics in the state.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel
State Senator, 33rd District

CC: Cindy Kynoch, Staff Director of Appropriations Committee

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic _____ Bill Number 746 *(if applicable)*

Name Chris Nuland Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115 Phone 904-233-3051
Street

Jacksonville, FL 32204 E-mail nulandlaw@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chapter, ACP / Florida Society of Plastic Surgeons

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 798
INTRODUCER:	Appropriations Committee; Judiciary Committee; Regulated Industries Committee; and Senator Ring
SUBJECT:	Residential Properties
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 798 relates to the operation and regulation of condominium associations, cooperative associations, homeowners' associations, and timeshare projects.

For homeowners' associations, the bill clarifies the notice requirements for the preservation of association covenants and restrictions under the Marketable Record Title Act.

For timeshare projects, the bill:

- Defines the term "timeshare project" to mean any timeshare property as defined in ch. 721, F.S., which is located in this state and that is also a transient public lodging establishment;
- Provides that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR or department);
- Exempts timeshare projects from the requirements that public lodging establishments maintain public bathroom facilities, provide in the main public bathroom soap and clean towels or other approved hand-drying devices, and provide guests with clean pillowslips and under and top sheets; and
- Removes timeshare plans from the definition of a "vacation rental," and provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.

The provisions related to condominium associations include:

- Authorizes the associations to enter an abandoned unit to inspect the unit and adjoining common elements, to make specific repairs, and to maintain the unit, and permits the association to charge the unit owner for expenses incurred by the association;
- Provides that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event shall be determined by the provisions of the declaration or bylaws;
- Permits board and committee members to participate, including voting, in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication, and for such participation to count towards a quorum;
- Repeals the Community Association Living Study Council; and
- Extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

For cooperative associations, the bill:

- Revises the financial reporting requirements by increasing to 90 from 60 days the time to prepare a financial statement, or to contract with a third party to prepare the financial statement;
- Specifies the type of financial reporting required based on the association's total annual revenue amounts;
- Limits the financial reporting requirement, for associations of fewer than 50 units, regardless of the association's annual revenues, to the preparation of a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents;
- Provides that persons who have been suspended or removed by the division or who are delinquent in the payment of any monetary obligation due to the association are not eligible to be a candidate for board membership and may not be listed on the ballot; and
- Provides for the removal from office of a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property.

In regard to homeowners' associations, the bill provides that an association does not have to provide members with copies of an amendment to the governing documents after it is approved by the membership if a copy of the proposed amendment was previously provided to the members before the vote on the amendment and the proposed amendment was not changed before the vote. In lieu of providing copies of the amendment, the bill also specifies the notice that must be provided to members after an amendment has been adopted.

In regard to condominium and cooperative associations, the bill requires outgoing board or committee members to relinquish all official records and property of the association in their possession or control to the incoming board within five days after the election. The bill provides that an outgoing board or committee member who violates this requirement is personally subject to a civil penalty by the Division of Florida Condominiums, Timeshares, and Mobile Homes. It also prohibits a board member from voting by e-mail.

For cooperative and homeowners' associations, the bill authorizes boards to exercise specified emergency powers in response to the declaration of a state of emergency, including the authority to implement a disaster plan, mitigate damages, and borrow money with the approval of the membership.

Finally, with regard to condominium, cooperative, and homeowners' associations, the bill provides that unit owners may consent in writing to the disclosure of contact information to which other owners are prohibited from having access.

The bill has an indeterminate, but insignificant fiscal impact.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Public Lodging Establishments

The Division of Hotels and Restaurants (HR division) within the Department of Business and Professional Regulation is the state agency authorized with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are more than 37,155 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.[1]

Section 509.013(4)(b)9., F.S., provides several exemptions from the definition of "public lodging establishment," including, in relevant part:

> Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242[, F.S].

Section 509.013(4)(a)1., F.S., defines a "transient public lodging establishment" to mean:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a "nontransient public lodging establishment" to mean:

[1] *See Annual Report, Fiscal Year 2012-2013*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2012_13.pdf (Last visited March 8, 2014).

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.242(1)(c), F.S., defines the term "vacation rental" to mean:

> A vacation rental is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

Timeshares

A timeshare interest is a form of ownership of real and personal property.[2] Timeshares are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH division) within the department in accordance with ch. 721, F.S.

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

Marketable Record Title Act

The Marketable Record Title Act (MRTA or act),[3] may cause covenants to lapse by operation of law if the covenants are silent as to expiration, or if the 30-year period in the act is shorter than the stated expiration time.

Sections 712.02, F.S., provides that:

> Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03[, F.S]. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:
> (1) The person claiming such estate; or
> (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing

[2] *See* s. 721.05(36), F.S.
[3] Chapter 712, F.S.,

> appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Sections 712.05 and 712.06, F.S., provide the process, including notice requirements, for the recording of interest in land and the preservation of covenants and restrictions for community associations which may be extinguished under operation of the act.

Section 712.05, F.S., requires that a written notice must be recorded to claim an interest in land and to preserve and protect from extinguishment any covenants or restrictions. Section 712.05(1), F.S., provides:

> Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of no longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:
> (a) Under a disability,
> (b) Unable to assert a claim on his or her behalf, or
> (c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.
>
> Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b),[F.S.,] was mailed or hand delivered to members of the homeowners' association not less than seven days prior to such meeting.

For covenants that have expired, residents in these communities have the option to revive the covenants after the expiration by following the procedure in ss. 720.403 - 720.407, F.S. The covenant revitalization procedures in ss. 720.403 - 720.407, F.S., are not available to homeowners' associations not governed by ch. 720, F.S., e.g., associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential use.[4] Non-mandatory associations may not revive covenants pursuant to

[4] Section 720.301(8) and (11), F.S.

ss. 702.403 - 702.407, F.S., because ch. 720, F.S., relates to residential homeowners' associations where membership is a mandatory condition for the owners of property.

Section 712.06, F.S., specifies the contents of the notice required under s. 712.05, F.S. Section 712.06(3), F.S., also provides for the service of the notice by the clerk of the circuit court. Section 712.06(3), F.S., provides:

> (3) The person providing the notice referred to in s. 712.05[, F.S.,] shall:
> (a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8)[, F.S.,] and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12)[, F.S]. If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:
>
> I hereby certify that I did on this_____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:
>
> _____
> (Clerk of the circuit court)
> of County, Florida,
> By (Deputy Clerk)
>
> The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or
>
> (b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05,[F.S.,] with the official record book and page number in which such notice was recorded, in a newspaper as defined in ch. 50[, F.S.,] in the county in which the property is located.

The Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), s. 712.06(3), F.S., requires the clerk of court to mail and publish notice of the preservation of homeowners' association covenants and restrictions. According to RPPTL, compliance with the notice required under s. 712.06(3), F.S., in the context of the preservation of homeowners' association covenants and restrictions is impracticable because of the large amount of space required to publish the notice, which may include tens or hundreds of pages of recorded instruments.

Condominium

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[5] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[6] A declaration is like a constitution in that it:

> Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[7]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[8] A declaration of condominium may be amended as provided in the declaration.[9] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[10] Condominiums are administered by a board of directors referred to as a "board of administration."[11]

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term "limited common elements" to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term "residential condominium" to mean:

> …a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a

[5] Section 718.103(11), F.S.
[6] Section 718.104(2), F.S.
[7] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[8] Section 718.104(5), F.S.
[9] See s. 718.110(1)(a), F.S.
[10] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[11] Section 718.103(4), F.S.

> condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35)[, F.S.,] shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404[, F.S].

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" to mean:

> …that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[12]

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[13]

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[14] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.[15]

[12] *See* ss. 719.106(1)(g) and 719.107, F.S.
[13] *See* s. 720.302(1), F.S.
[14] Section 720.301(9), F.S.
[15] Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.[16] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.[17] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[18]

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the FCTMH division in accordance with ch. 718, F.S. The FCTMH division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S. with respect to associations that are still under developer control.[19] The FCTMH division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the FCTMH division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.[20]

As part of the FCTMH division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the FCTMH division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,[21] recordkeeping requirements, including which records are accessible to the members of the association,[22] and financial reporting.[23] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

[16] *See* ss. 720.303 and 720.307, F.S.
[17] *See* ss. 720.301 and 720.303, F.S.
[18] Section 720.303(1), F.S.
[19] Section 718.501(1), F.S.
[20] Section 718.501(1), F.S. *See* Peter M. Dunbar, The Condominium Concept: *A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.
[21] *See* s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.
[22] *See* s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.
[23] *See* s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

Rental of Condominium Units

Section 718.110(13), F.S., provides that any amendment of the declaration of condominium that prohibits unit owners from renting their units, alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

Insurance – Condominiums

Section 718.111(11), F.S., sets forth the insurance responsibilities of condominium associations and unit owners. Section 718.111(11)(j), F.S., requires the association to reconstruct, repair, or replace as necessary, as a common expense, any portion of the condominium property that it must insure against property loss and is damaged by an insurable event. Section 718.111(11)(f), F.S., specifies the property of the condominium for which the association must provide primary coverage. This section provides:

> (f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:
> 1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
> 2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2)[, F.S].
> 3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

Right of Access to Units – Condominiums and Cooperatives

Section 718.111(5), F.S., provides that condominium associations have an irrevocable right of access to each unit during reasonable hours. They have the right to access units when necessary to maintain, repair, or replace any common elements or of any portion of a unit that the association must maintain in accordance with the declaration or as necessary to prevent damage to the common elements or to a unit or units.

Section 719.104(1), F.S., provides a comparable provision for cooperative associations.

Official Records Chapters 718, 719, and 720, F.S.

Section 718.111(12)(c), F.S., for condominium associations, s. 719.104(2), F.S., for cooperative associations, and s. 720.303(5), F.S., for homeowners' associations, provide for the maintenance of the official records of the associations. These provisions delineate the types of records that the associations must maintain and identify types of records that are accessible to their members.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the condominium association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Medical records of unit owners;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any personal identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Condominium unit owners may consent in writing to the disclosure of information that is not accessible to the other unit owners.

The official records provisions for condominiums and homeowners' associations are substantively similar, particularly in regards to the list of the types of information that are not accessible to members.[24] For example, members of condominium associations and homeowners' associations do not have access to the addresses, telephone numbers, and other identifying personal information of the members. Chapter 719, F.S., does not provide a similar limitation on the types of records that are accessible to the members of a cooperative association.

Condominium Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., allows members of the condominium board to meet by telephone conference. Members who appear by teleconference may be counted toward obtaining a quorum and may vote as if physically present. A telephone speaker must be used to permit the conversation to be heard by other board members and any unit owners who may be present.

Condominiums and Cooperatives – Assessments and Foreclosures

Current law defines an "assessment" as a "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[25]

[24] *See* ss. 718.111(12)(c) and 720.303(5), F.S.
[25] Section 718.103(1), F.S.

"Special assessment" is defined to mean, "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[26]

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is *without prejudice*[27] to any right the owner may have to recover from the previous owner the amounts paid by the owner."[28]

Section 719.108, F.S., provides a comparable liability provision for cooperative associations.

If a first mortgagee, (e.g., the mortgage lending institution) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.[29] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.[30] In the foreclosure action, the association may defend its claims for unpaid assessments. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.[31] The successor or assignee, with respect to the first mortgagee, includes only a subsequent holder of the first mortgage.[32]

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.[33] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year.[34] The association may also charge an administrative late fee of up to the greater of $25 or five percent of each installment of the assessment for each delinquent installment for which the payment is late.[35] Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.[36]

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

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[26] Section 718.103(24), F.S.
[27] The term "without prejudice" means "[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY (9th ed. 2009).
[28] Section 718.116(1)(a), F.S.
[29] Section 718.116(1)(b), F.S.
[30] *Id.*
[31] Section 718.116(1)(e), F.S.
[32] Section 718.116(1)(g), F.S.
[33] Section 687.02(2), F.S., prohibits usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.
[34] Section 718.116(3), F.S.
[35] *Id.*
[36] *Id.*

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels are acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Financial Reporting for Cooperatives

Section 719.104(4), F.S., sets forth the financial reporting responsibilities of cooperative associations. Cooperative associations have 60 days after the end of the fiscal year or calendar year to prepare and complete a financial report for the preceding fiscal year. The report must be mailed or furnished by personal delivery to each unit owner. The report must be a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures (GAAP).

Section 719.104(4)(a), F.S., specifies the accounts and expenses that must be shown in the report. It provides in pertinent part:

> The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:
> 1. Costs for security;
> 2. Professional and management fees and expenses;
> 3. Taxes;
> 4. Costs for recreation facilities;
> 5. Expenses for refuse collection and utility services;
> 6. Expenses for lawn care;
> 7. Costs for building maintenance and repair;
> 8. Insurance costs;
> 9. Administrative and salary expenses; and

10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

Section 719.104(4)(b), F.S., requires that the FCTMH division adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year.[37] The financial statements must be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The FCTMH division's rules may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j), F.S.[38]

Cooperative associations may waive the requirement to have financial statements compiled, reviewed, or audited at a duly called meeting of the association.[39] In an association that is under developer control, the developer may vote to waive the audit requirement for the first two years of the operation of the association, after which time waiver of an applicable audit requirement requires the approval of a majority of voting interests other than the developer. The meeting must be held prior to the end of the fiscal year, and the waiver is effective for only one fiscal year.

The reporting requirements in s. 719.104(4)(b), F.S., do not apply to a cooperative that consists of 50 or fewer units.[40]

Financial Reporting for Condominium and Homeowners' Associations

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of homeowners' associations. Homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Section 718.111(13)(a), F.S., provides, in part, that if the association has a total annual revenue of $150,000 or more, but less than $300,000, the association must prepare compiled financial statements.[41] If the association has a total annual revenue of at least $300,000 and not less than $500,000, the association must prepare reviewed financial statements.[42] If the total annual

[37] *See* rule 61B-76.006, F.A.C., for the division's financial reporting requirements for cooperative associations.
[38] Section 719.501(1)(j), F.S., authorizes the division to adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by ch. 719, F.S. The principles, policies, and standards must take into consideration the size of the association and the total revenue collected by the association.
[39] Section 719.104(4)(b), F.S.
[40] *Id.*
[41] A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).
[42] A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

revenue is $500,000 or more, the association must prepare audited financial statements.[43] If the total annual revenue is less than $150,000, then a report of cash receipts must be prepared.[44] An association having less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.[45]

The amounts of total annual revenue and the type of financial statement requirements are identical to the financial reporting requirements for homeowners' associations in s. 720.303(7), F.S.

Community Association Living Study Council

Section 718.50151, F.S., creates the Community Association Living Study Council. The council consists of seven appointed members. The council's function is to receive public input regarding issues of concern with respect to community association living. The council must make recommendations for changes in the law related to community association living and must advise the FCTMH division concerning revisions and adoptions of rules affecting condominium and cooperatives.

Homeowners' Associations – Amendments

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents.

Section 720.306(1)(c), F.S., prohibits amendments that materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.

III. Effect of Proposed Changes:

Timeshare Projects

Section 509.013, F.S., excludes a "timeshare project" from the definition of "public lodging establishments."

Section 509.032, F.S., provides that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the division.

[43] An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*
[44] Section 718.111(13)(b)1., F.S.
[45] Section 718.111(13)(b)2., F.S.

Section 509.221(9), F.S., exempts timeshare projects from the requirements that public lodging establishments maintain public bathroom facilities, provide in the main public bathroom soap and clean towels or other approved hand-drying devices, and provide each bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets. Current law exempts vacation rentals and transient apartments from these requirements.

Section 509.241(2), F.S., provides that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license. Current law exempts from the license requirement condominium associations that do not own any units classified as vacation rentals.

Section 509.242(1)(c), F.S., removes timeshare plans from the definition of a "vacation rental." It also provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.

Section 509.242(1)(g), F.S., defines the term "timeshare project" to mean "a timeshare property, as defined in chapter 721, [F.S.] that is located in this state and that is also a transient public lodging establishment."

Section 509.251(1), F.S., allows a single public lodging establishment license to cover all the buildings of a timeshare project which are managed by the same licensed agent even if the buildings are at separate locations. Thus, timeshare projects with respect to aggregating buildings for licensure will be treated the same way as vacation rentals.

Marketable Record Title Act

Section 712.05(1), F.S., provides that the homeowners' association or the clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3), F.S., in order to preserve association covenants and restrictions under the Marketable Record Title Act The bill also provides that this provision is intended to clarify existing law.

Right of Access to Units – Condominiums

Section 718.111(5)(b), F.S., expands the authority of an association's board to enter abandoned condominium units. Section 718.111(5)(b)1., F.S., provides that, at the sole direction of the board, the association may enter an abandoned unit to inspect it and adjoining common elements, to make specific repairs, and to maintain the unit. This includes repairs to the unit or common elements serving the unit. The bill permits the board to enter an abandoned unit to repair damage from mold, to determine if any mold or deterioration is present, to turn on the power for the unit, and to otherwise maintain, preserve, and protect the unit and adjoining common elements.

Section 718.111(5)(b)1., F.S., provides that a unit is presumed to be abandoned if all tenants or unit owners have been absent from the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry, unless the unit owner is current on all assessments or notified the association, in writing of an intended absence. The bill does not define what efforts to determine the whereabouts of the owner would constitute reasonable inquiry.

Section 718.111(5)(b)2., F.S., provides that, except in the case of an emergency, an association may not enter a unit until after two days' notice of intent to enter has been mailed or delivered to the owner at the address of the owner as reflected in the records of the association. It permits the association to give notice by electronic transmission to unit owners who have consented to receive notice by electronic transmission.

Section 718.111(5)(b)3., F.S., permits the association to charge the unit owner for any reasonable expense incurred by the association. The charge is enforceable as an assessment pursuant to s. 718.116, F.S., and the association may use its lien authority provided in s. 718.116, F.S., to enforce collection of the expense. This provision does not provide guidance as to the type of expenses that the association may incur and assign to the unit owner, e.g., it does not distinguish between the actual cost to repair mold or deterioration of the property and administrative expenses incurred by the association in its efforts to contact the unit owner.

Section 718.111(5)(b)4., F.S., authorizes the association to petition a court to appoint a receiver to rent an abandoned unit for the benefit of the association to offset the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs of collection, and attorney fees against the rental income.

Condominium – Insurance

Section 718.111(11)(j), F.S., provides that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event is determined by the declaration or bylaws.

Section 718.111(11)(j), F.S., deletes uninsured losses from the list of items that are a common expense of the association. As provided in the bill, whether an uninsured loss is considered a common expense would be determined by the declaration or bylaws.

Condominiums – Official Records

Section 718.111(12)(c)5., F.S., provides that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.

Section 718.111(12)(f), F.S., requires an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill requires that the division impose a civil penalty as set forth in s. 718.501(1)(d)6., F.S.,[46] against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property. The requirement that the records and property must be relinquished within five days after an election may not apply, or may be vague, in circumstances in which an election is not held to fill a

[46] Section 718.501(1)(d)6., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed $5,000.

vacancy on the board, e.g., s. 718.112(2)(d)2., F.S., provides that an election is not required if the number of vacancies equals or exceeds the number of candidates.

The bill provides a comparable provision for cooperative associations in s. 719.104(2)(e), F.S.

Condominiums - Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., permits a board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication to count towards a quorum and that the member can vote as if present. There is a comparable provision in current law for meetings of the board of cooperative associations.[47]

Section 718.112(2)(c), F.S., provides a board member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Community Association Living Study Council

The bill repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council.

Condominiums-Assessments

Section 718.116(1)(a), F.S., provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for the costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S.

Distressed Condominium Relief Act

Section 718.707, F.S., extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015, to July 1, 2016.

Cooperatives - Official Records

Section 719.104(2)(c)5., F.S., provides that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph. The bill provides comparable provisions for cooperative associations in s. 719.104(2)(c)5., F.S., and homeowners' associations in s. 720.303(5)(c)5., F.S.

The bill also creates s. 719.104(2)(e), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill requires that the

[47] Section 719.106(1)(b)5., F.S.

division impose a civil penalty as set forth in s. 719.501(1)(d), F.S.,[48] against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property.

The bill provides a comparable provision for condominium associations in s. 718.111(12)(f), F.S.

Cooperatives – Financial Reporting

Section 719.104(4), F.S., specifies the type of financial reporting that a cooperative association must prepare. The bill increases the time the board has to prepare a financial statement from 60 to 90 days. Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete the financial statements. It provides that within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge. The bylaws may provide for different time frames for the financial report. The bill requires the division adopt rules setting forth uniform accounting principles, standards, and reporting requirements.

The bill replaces existing law which requires a complete financial report of receipts and expenditures for the previous 12 months or a complete set of financial statements for the preceding fiscal year prepared by generally accepted accounting procedures. It provides that the new financial reports must conform to generally accepted accounting principles. The type of reporting is based on the association's total annual revenue.

Section 719.104(4), F.S., provides that cooperative associations may not waive the financial reporting requirements of this section for more than three consecutive years.

An association having total annual revenues between $150,000 and $299,000 must prepare compiled financial statements. An association having total annual revenues of at least $300,000 but less than $499,999 must prepare reviewed financial statements. An association having total revenues of $500,000 or more must prepare audited financial statements.

Section 719.104(4)(c)1., F.S., provides that an association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.

These financial reporting thresholds are comparable to those required under the division's current financial reporting rule for cooperatives.[49] The thresholds are also comparable to the financial reporting thresholds for condominiums in s. 718.111(13), F.S., and for homeowners' associations in s. 720.303(7), F.S.

Section 719.104(4)(c)2., F.S., provides that an association of fewer than 50 units, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents.

[48] Section 719.501(1)(d)4., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed $5,000.
[49] *See* rule 61B-76.006, F.A.C.

Section 719.104(4)(c)3., F.S., specifies the receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications that must be disclosed in the report of cash receipts and expenditures.

Section 719.104(4)(d)., F.S., provides that, if at least 20 percent of the unit owners petition the board for a greater level of financial reporting than required under s. 719.104, F.S., the association must duly notice and hold a meeting of the members within 30 days after receipt of the petition. Upon approval by a majority of the voting interests present at the meeting, the association must prepare an amended budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. Section 719.104(4)(d)., F.S., also requires that the association provide the following within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

- Compiled, reviewed, or audited financial statements if the association is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements if the association is otherwise required to prepare compiled financial statements; or
- Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

Section 719.104(4)(e), F.S., provides that, if approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Cooperatives – Officers and Directors

Section 719.106(1)(a)2., F.S., provides that a person who has been suspended or removed by the division under ch. 719. F.S.,[50] or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. Section 718.112(2)(d)2., F.S., provides a comparable provision for condominium associations in current law.

Section 719.106(1)(a)2., F.S., also provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.[51] While the criminal charge is pending, the officer or director may not be

[50] Section 719.501(1)(d)6., F.S., authorizes the division to order the removal of an officer or board member who has willfully and knowingly violated a provision of ch. 719, F.S., adopted rule, or a final order of the division.

[51] Section 719.106(1)(d)6., F.S., provides for the filling of a vacancy, unless otherwise provided in the bylaws. If a vacancy occurs on the board before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining

appointed or elected to a position as a director or officer. The director or officer must be reinstated for the remainder of his or her term of office, if any, if the charges are resolved without a finding of guilt. Section 718.112(2)(o), F.S., provides a comparable provision in current law for condominium associations.

This provision also provides that a person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least five years as of the date such person seeks election to the board. The bill provides that the validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. Section 718.112(2)(d)2., F.S., provides a comparable provision in current law for condominium associations.

Emergency Powers for Cooperative Boards

Section 719.128, F.S., is created to authorize the boards of cooperative associations, to the extent allowed by law, to exercise certain emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,[52] or a mandatory evacuation order issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board or membership meetings with notice of the meetings and the board's decisions by any means the board deems appropriate and practical under the circumstances;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;

directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled.

[52] Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons;
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration; and
- Require the evacuation of the property. The association is immune from liability for injury to persons or property arising from the failure to follow an evacuation required by the board.

It is unclear whether the disaster plan may include provisions related to shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings or will permit the disaster plan to include shutting down the electricity, water, and sewer systems for both members' units and for association buildings. A comparable provision for condominium associations is in s. 718.1265, F.S.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and remove personal property from a unit;
- Contract, on behalf of the unit owner, for services which are necessary to prevent further damage to the cooperative property, including:
  - drying of units,
  - boarding of broken windows or doors, and
  - replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to condominium boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 720.316, F.S.

Homeowners' Associations – Official Records

Section 720.303(5)(c)5., F.S., provides unit owners may consent in writing to the disclosure of other contact information described in this subparagraph. The bill provides comparable provisions for condominium associations is s. 718.111(12)(c)5., F.S., and cooperative associations in s. 719.104(2)(c)5., F.S.

Homeowners' Associations – Amendments

Section 720.306(1)(b), F.S., provides that an association does not have to provide members with copies of an amendment to the governing documents after it is approved by the membership if a copy of the proposed amendment was previously provided to the members before the vote of the members on the amendment and the proposed amendment was not changed before the vote of the members. Instead, the association must provide notice that the amendment was adopted. The notice must provide the official book and page number or instrument number of the recorded amendment, and state that a copy of the amendment is available at no charge to the member upon written request to the association. The association may also provide the copies and notice electronically to those owners who have consented to receive notice electronically.

Emergency Powers for Homeowners' Association Boards

Section 720.316, F.S., authorizes the boards of homeowners' associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,[53] or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;

[53] Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons; and
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration.

It is unclear whether the disaster plan may include provisions related to shutting down elevators, electricity, water, sewer, security systems, or air conditioners for association buildings or will permit the disaster plan to include shutting down the electricity, water, and sewer systems for both members' units and for association buildings.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures on or within association property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to homeowners' association boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 719.128, F.S.

Effective Date

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 798 provides that a unit owner in a condominium association is jointly and severally liable with the previous owner for all unpaid assessments.

C. Government Sector Impact:

The new public lodging license classification for timeshare projects requires information system program changes to the DBPR's Versa system, OnBase document management system, and the Interactive Voice Response system. The department indicates the additional programming costs can be handled within existing resources.

The Office of the State Courts Administrator indicates that the bill may result in an increase in workload for the court system. This increase is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Relating to financial reports required of cooperative association, it is unclear under the bill whether the board has 90 days to contract with a third party to prepare the financial statement or whether the third party must complete the financial statement within the 90 days.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.013, 509.032, 509.221, 509.241, 509.242, 509.251, 712.05, 718.111, 718.112, 718.116, 718.707, 719.104, 719.106, 720.303, and 720.306.

This bill creates the following sections of the Florida Statutes: 719.128 and 720.316.

This bill repeals section 718.50151 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The Committee Substitute:

- Removes a condition to determine when a unit is presumed to be abandoned and provides that a unit is presumed abandoned if "all tenants and the unit owner" (instead of "all tenants") have been absent from the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry, unless the owner is current on all assessments or has notified the association of an intended absence. Provides for the collection of reasonable expenses incurred by the association.
- Amends s. 718.111(11)(j), F.S., to delete uninsured losses from the list of items which are a common expense of the association.
- Specifies that a unit owner in a condominium association is jointly and severally liable with the previous owner for all unpaid assessments; however the committee substitute removes additional liability that included interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

CS/CS by Judiciary Committee on April 1, 2014:
The committee substitute no longer exempts timeshare projects from the definition of "public lodging establishment." The committee substitute does not specify requirements for amendments to condominium documents affecting the rental of condominium units. The committee substitute repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council. The committee substitute deletes provisions revising the liabilities of a cooperative unit owner to include interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. Additionally, the committee substitute does not alter the liabilities of a parcel owner in a homeowners' association for interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

CS by Regulated Industries Committee on March 6, 2014:
The committee substitute (CS) differs from SB 798 as follows:

- Changes the title from an act relating to "real and personal property" to an act relating to "residential property."
- Amends s. 509.013(4)(b)9., F.S., to exempt timeshare projects from the definition of "public lodging establishment."
- Amends s. 509.032, F.S., to provide that public lodging units that are classified as timeshare projects are not subject to the requirement of at least biannual inspections by the division.
- Amends s. 509.221(9), F.S., to exempt timeshare projects from the requirements that public lodging establishments must maintain public bathroom facilities, provide in the

main public bathroom soap and clean towels or other approved hand-drying devices, and provide each bed, bunk, cot, or other sleeping place for the use of guests with clean pillowslips and under and top sheets.

- Amends s. 509.241(2), F.S., to provide that a condominium that does not own any units that classified as a timeshare project is not required to apply for or receive a public lodging establishment license.
- Amends s. 509.242(1)(c), F.S., to define the term "timeshare project" to mean any timeshare property as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment.
- Amends s. 509.242(1)(d), F.S., to remove timeshare plans from the definition of a "vacation rental." It also provides that a vacation rental is a transient public lodging establishment that is not a timeshare project.
- Amends s. 509.251(1), F.S., to include timeshare projects, in addition vacation rental units, that are within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and requires that the division charge a license fee as if all units in the application are in a single licensed establishment.
- Amends s. 712.05(1), F.S., to provide that the homeowners' association or the clerk of the circuit court is not be required to provide additional notice pursuant to s. 712.06(3), F.S., It removes the provision that the homeowners' association or the clerk of the circuit court is required to provide notice other than as provided under s. 712.06(3), F.S.
- Amends s. 718.111(5)(b)2., F.S., to reference a 2-day wait instead of a 48-hour wait after the notice of intent to enter a property that has been abandoned. It provides that the notice of intent to enter must have been mailed or delivered, and it permits the association to give notice by electronic transmission to unit owners who have consented to receive notice by electronic transmission.
- Amends s. 718.111(11)(j), F.S., to provide that the insurance responsibility of the association or unit owners for reconstruction, repair, or replacement in the absence of an insurable event shall be determined by the provisions of the declaration or bylaws.
- Amends s. 718.111(12)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Does not amend s. 718.111(12)(f), F.S., to provide that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S. The CS amends this provision to require the division to impose a civil penalty as set forth in s. 718.501(1)(d)6., F.S., against an outgoing board or committee member who willfully and knowingly fails to relinquish such records or property.
- Amends s. 718.112(2)(b)5., F.S., to provide that members of the board of administration may participate by real-time electronic or video communication.
- Amends s. 719.104(2)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Does not amend s. 719.104(2)(e), F.S., to provide that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 719.501(1)(d), F.S. The CS amends this provision to require the division to impose a civil penalty as set forth in s. 719.501(1)(d), F.S., against an outgoing board

or committee member who willfully and knowingly fails to relinquish such records or property.

- Does not amend s. 719.106(1)(c), F.S., to require that notice of board meetings must specifically identify all agenda items. The CS also does not provide that, if 20 percent of the voting interests petition the board to address an item of business, the board must place the item on the agenda at its next regular board meeting or at a special meeting of the board no later than 60 days after the petition is received.
- Does not amend s. 719.106(1)(d)6., F.S., to provide that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting, and it does not delete the current provision that appointed or elected member shall fill the unexpired term of the seat being filled.
- Amends s. 719.128(1)(f), F.S., to provide that the association's implementation of a disaster plan includes shutting off air conditioners for association buildings.
- Amends s. 720.303(5)(c)5., F.S., to provide that unit owners may consent in writing to the disclosure of other contact information described in this subparagraph.
- Amends s. 720.306(1)(b), F.S., to provide that an association does not have to provide members with copies of an amendment to the governing documents after it has been approved by the membership if a copy of the proposed amendment had been previously provided to the members before the vote of the members on the amendment and the proposed amendment was not changed before the vote of the members. In lieu of providing copies of the amendment, the CS also specifies the notice that must be provided to members after an amendment has been adopted.
- Amends s. 720.316(1)(f), F.S., to provide that the association's implementation of a disaster plan includes shutting off air conditioners for association buildings.

B. Amendments:

None.

949318

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2014	.	
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	.	
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The Committee on Appropriations (Ring) recommended the following:

Senate Amendment

Delete lines 348 - 371
and insert:
presumed to be abandoned if all tenants and the unit owner have been absent from the unit for 2 consecutive months and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry. However, this presumption does not apply if the unit owner is current on all assessments or the unit owner or a tenant has notified the

949318

association, in writing, of an intended absence.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any reasonable expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use the lien authority provided under s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver to lease out an

775078

LEGISLATIVE ACTION

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

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 394

and insert:

insurance deductibles~~, uninsured losses,~~ and other damages in

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

And the title is amended as follows:

Delete line 32

and insert:

775078

repairs; removing uninsured losses as a common expense of a condominium; providing that an owner may consent in

582410

LEGISLATIVE ACTION

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

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 668 - 691
and insert:
(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of

582410

transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 11. Subsection (1) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor. For the purposes of this paragraph, the term "previous unit owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid

582410

assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

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

And the title is amended as follows:

Delete lines 46 - 51

and insert:

F.S.; clarifying the meaning of the term "previous owner"; limiting the present owner's liability for unpaid assessments to those that accrued before the association acquired title; amending s. 719.108, F.S.; clarifying the meaning of the term "previous unit owner"; limiting the present unit owner's liability for unpaid assessments to those that accrued before the association acquired title;

929482

LEGISLATIVE ACTION

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

The Committee on Appropriations (Ring) recommended the following:

Senate Substitute for Amendment (582410) (with title amendment)

Delete lines 668 - 691
and insert:
(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner

929482

for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

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

And the title is amended as follows:

Delete lines 46 - 51

and insert:

F.S.; clarifying the meaning of the term "previous owner"; limiting the present owner's liability for unpaid assessments to those that accrued before the association acquired title;

By the Committees on Judiciary; and Regulated Industries; and Senator Ring

590-03532-14 2014798c2

A bill to be entitled

An act relating to residential properties; amending s. 509.013, F.S.; revising the definition of the term "public lodging establishment"; amending s. 509.032, F.S.; providing that timeshare projects are not subject to annual inspection requirements; amending s. 509.221, F.S.; providing nonapplicability of certain public lodging establishment requirements to timeshare projects; amending s. 509.241, F.S.; providing that a condominium association that does not own any units classified as timeshare projects is not required to apply for or receive a public lodging establishment license; amending s. 509.242, F.S.; revising the definition of the term "public lodging establishment" to include a "timeshare project"; deleting reference to the term "timeshare plan" in the definition of "vacation rental"; defining the term "timeshare project"; amending s. 509.251, F.S.; providing that timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application; amending s. 712.05, F.S.; clarifying existing law relating to notification for purposes of preserving marketable title; amending s. 718.111, F.S.; authorizing an association to inspect and repair abandoned condominium units; providing conditions to determine if a unit is abandoned; providing a mechanism for an association to recover costs associated with maintaining an abandoned unit;

590-03532-14 2014798c2

providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing condominium association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; amending s. 718.112, F.S.; providing that a board or committee member's participation in a meeting via real-time videoconferencing, Internet-enabled videoconferencing, or similar electronic or video communication counts toward a quorum and that such member may vote as if physically present; prohibiting the board from voting via e-mail; amending s. 718.116, F.S.; providing that a unit owner is jointly and severally liable with the previous owner for certain costs; providing an exception; defining the term "previous owner"; limiting costs and fees incurred by the association incident to the collection process to those incurred before the association acquired title; repealing s. 718.50151, F.S., relating to the Community Association Living Study Council and its membership functions; amending s. 718.707, F.S.; extending the date by which a condominium parcel must be acquired in order for a person to be classified as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; providing that an owner may consent in writing

to the disclosure of certain contact information; requiring an outgoing cooperative association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; providing dates by which financial reports for an association must be completed; specifying that members must receive copies of financial reports; requiring specific types of financial statements for associations of varying sizes; providing exceptions; providing a mechanism for waiving or increasing financial reporting requirements; amending s. 719.106, F.S.; providing for suspension from office of a director or officer who is charged with one or more of certain felony offenses; providing procedures for filling such vacancy or reinstating such member under specific circumstances; providing a mechanism for a person who is convicted of a felony to be eligible for board membership; creating s. 719.128, F.S.; providing emergency powers of a cooperative association; amending s. 720.303, F.S.; providing that an owner may consent in writing to the disclosure of certain contact information; amending s. 720.306, F.S.; providing for specified notice to members in lieu of copies of an amendment; creating s. 720.316, F.S.; providing emergency powers of a homeowners' association; providing an effective date.

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

Section 1. Subsection (4) of section 509.013, Florida Statutes, is amended to read:

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

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity

acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Section 2. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102,

or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

Section 3. Subsection (9) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental, ~~or~~ nontransient apartment, or timeshare project as described in s. 509.242(1)(c), ~~and~~ (d), and (g).

Section 4. Subsection (2) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive

a public lodging establishment license.

Section 5. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(a) *Hotel.*—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) *Motel.*—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) *Vacation rental.*—A vacation rental is any unit or group of units in a condominium or~~,~~ cooperative~~, or timeshare plan~~ or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

(d) *Nontransient apartment.*—A nontransient apartment is a building or complex of buildings in which 75 percent or more of

the units are available for rent to nontransient tenants.

(e) *Transient apartment.*—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) *Bed and breakfast inn.*—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

(g) *Timeshare project.*—A timeshare project is a timeshare property, as defined in chapter 721, which is located in this state and which is also a transient public lodging establishment.

Section 6. Subsection (1) of section 509.251, Florida Statutes, is amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment shall not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be

combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.

Section 7. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A ~~Any~~ person claiming an interest in land or a homeowners' association desiring to preserve a ~~any~~ covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a written notice~~, in writing,~~ in accordance with this chapter. Such ~~the provisions hereof, which~~ notice preserves ~~shall have the effect of so preserving~~ such claim of right or such covenant or restriction or portion of such covenant or restriction for up to ~~a period of not longer than~~ 30 years after filing the notice ~~same~~ unless the notice is filed again ~~filed~~ as required in this chapter ~~herein~~. A person's ~~No~~ disability or lack of knowledge of any kind may not ~~on the part of anyone shall~~ delay the commencement of or suspend the running of the ~~said~~ 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a ~~any~~ claimant who is:

(a) Under a disability~~;~~,

(b) Unable to assert a claim on his or her behalf~~;~~, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of

marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least ~~not less than~~ 7 days before ~~prior to~~ such meeting. The homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3). The preceding sentence is intended to clarify existing law.

Section 8. Subsection (5), paragraph (j) of subsection (11), and paragraph (c) of subsection (12) of section 718.111, Florida Statutes, are amended, and paragraph (f) is added to subsection (12) of that section, to read:

718.111 The association.—

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit ~~or units~~.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver and may lease out an abandoned unit for the benefit of the association to offset against the rental income the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney fees.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by the provisions of the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the

financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records

within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a

smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or

her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Section 9. Paragraphs (b) and (c) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with

subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked~~. Every proxy is revocable~~ at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A ~~If any of the~~ board or committee member's participation in a meeting via telephone, real-time

videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must be used so that the conversation of such ~~those~~ members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose ~~of the board, but not later than 60 days after the receipt of the~~

~~petition, shall place the item on the agenda~~. An ~~Any~~ item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a ~~any~~ meeting at which a nonemergency special assessment ~~assessments,~~ or an ~~at which~~ amendment to rules regarding unit use~~,~~ will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must ~~are to~~ be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting ~~to the owner of each unit~~. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section.

If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered ~~for any reason~~ must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

Section 10. Paragraph (a) of subsection (1) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process, except that in the case of a foreclosure sale, the interest, late charges, and reasonable attorney fees and costs may not exceed 10 percent of the winning bid amount. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure. This paragraph does not affect the liability of a first mortgagee or its successor or assignees as provided in paragraph (b).

Section 11. Section 718.50151, Florida Statutes, is repealed.

Section 12. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee

or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2016 ~~2015~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 13. Paragraph (c) of subsection (2) and subsection (4) of section 719.104, Florida Statutes, are amended, and paragraph (e) is added to subsection (2) of that section, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's

willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative

with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit

owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(e) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 719.501(1)(d) against an

outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(4) FINANCIAL REPORT.—

(a) Within 90 ~~60~~ days following the end of the fiscal or calendar year or annually on such date as ~~is otherwise~~ provided in the bylaws of the association, the board of administration ~~of the association~~ shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements ~~mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures~~. ~~The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:~~

~~1. Costs for security;~~

~~2. Professional and management fees and expenses;~~

~~3. Taxes;~~

~~4. Costs for recreation facilities;~~

~~5. Expenses for refuse collection and utility services;~~

~~6. Expenses for lawn care;~~

~~7. Costs for building maintenance and repair;~~

~~8. Insurance costs;~~

~~9. Administrative and salary expenses; and~~

~~10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.~~

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement ~~The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year~~. ~~The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the~~

~~bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j).~~

4. The requirement to have the financial statement~~s~~ compiled, reviewed, or audited does not apply to an association ~~associations~~ if a majority of the voting interests of the association present at a duly called meeting of the association have voted ~~determined for a fiscal year~~ to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of ~~the~~ operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years ~~This subsection does not apply to a cooperative that consists of 50 or fewer units~~.

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

3. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required by this section, the association shall duly notice and hold a membership meeting within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements, if the association is otherwise required to prepare reviewed financial statements.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 14. Paragraph (a) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the

contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board

membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3.~~2.~~ When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

Section 15. Section 719.128, Florida Statutes, is created to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually

responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 16. Paragraph (c) of subsection (5) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association

funds; recalls.—

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the

inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative

proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is

not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Section 17. Paragraph (b) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the

member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically.

Section 18. Section 720.316, Florida Statutes, is created to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are

insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 19. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

April 2, 2014

Honorable Senator Joe Negron
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 798, relating to Residential Properties, on the Appropriations Committee agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Cindy Kynoch, Staff Director

REPLY TO:
☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic _____ Bill Number 798 *(if applicable)*

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

Job Title Attorney

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

Tallahassee FL 32301 E-mail dferguson@reuphlaw.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Community Advocacy Network

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Residential Properties

Bill Number 798 *(if applicable)*

Name Travis Moore

Amendment Barcode *(if applicable)*

Job Title

Address P.O. Box 781
Street

Phone 727.421.6902

Largo FC 33779
City *State* *Zip*

E-mail moore@tampabay.rr.com

Speaking: ☐ For ☐ Against ☐ Information

Representing Community Associations Institute (CAI)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14
Meeting Date

Topic Condos

Bill Number 798 *(if applicable)*

Name Alice Vickers

Amendment Barcode 949318 *(if applicable)*

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 536 3121

E-mail alicevickers@flacp.org

Speaking: ☑ For ☐ Against ☐ Information
Amendment

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 810
INTRODUCER:	Regulated Industries Committee and Senator Galvano
SUBJECT:	Pugilistic Exhibitions
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	McKay	McVaney	GO	**Favorable**
3.	Munroe	Cibula	JU	**Favorable**
4.	Davis	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department). The significant policy changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of $40,000 on the broadcast rights.
- Exempting from the five percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed five percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding five percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a five percent gross receipts tax.
- Clarifying the commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state.
- Eliminating the requirement of licensure for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.

The bill appropriates $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this Act.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department). Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held Florida must meet the requirements for holding the match included in ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval, of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.[1] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[2] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent periods for which data is available, the commission licensed 1,224 professionals in Fiscal Year 2011-2012 and processed 51 live event permits.[3] According to the department, it licensed 1,056 professionals and processed 39 live permits in Fiscal Year 2012-2013.

In addition to its processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected,

[1] Section 548.006(3), F.S.
[2] Section 548.002(2), F.S.
[3] *See Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf (Last visited March 8, 2014).

participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter is collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff; i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

Definitions

Section 548.002(3), F.S., defines the term "boxing" to mean "to compete with the fists."

Section 548.002(5), F.S., defines the term "concessionaire" to mean:

> …any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term "contest" to mean "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head."

Section 548.002(9), F.S., defines the term "exhibition" to mean:

> …a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(10), F.S., defines the term "foreign copromoter" to mean "a promotor who has no place of business within this state."

Section 548.002(12), F.S., defines the term "kickboxing" to mean to "compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions."

Section 548.002(16), F.S., defines the term "mixed martial arts" to mean:

> …unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(19), F.S., defines the term "professional" to mean:

> …a person who has received or competed for any purse or other article of a value greater than $50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term "promoter" to mean:

> …any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term "purse" to mean:

> …the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional's share of any payment received for radio broadcasting, television, and motion picture rights.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.[4] Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.[5] Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical

[4] *See* s. 548.012(1), F.S.
[5] Section 548.017, F.S.

training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.[6]

Exceptions

The commission's jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.[7]

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.[8]

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.[9] Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.[10] Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.[11] If the commission finds the charges sufficient, it may decide

[6] *See* s. 548.015, F.S.
[7] *See* s. 548.007, F.S.
[8] Section 548.054(1), F.S.
[9] Section 548.054(2), F.S.
[10] *Id.*
[11] *Id.*

that all or a part of the funds be forfeited.[12] Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.[13]

Reporting and Tax Requirement

Within 72 hours after a match, the promoter of that match must file a written report with the commission.[14] The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.[15] Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.[16]

According to the department, the current definition of "gross receipts" has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[17]

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.[18]

Any written report required to be filed with the commission must be postmarked within 72 hours after the conclusion of the match; an additional five days is allowed for mailing.[19] According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

[12] *Id.*
[13] *Id.*
[14] Section 548.06(1), F.S.
[15] *Id.*
[16] Section 548.06(1), F.S.
[17] Section 548.06(2), F.S.
[18] Section 548.06(3), F.S.
[19] Section 548.06(4), F.S.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of five percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event.[20]

Commission Hearings

Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, any member of the commission may conduct a hearing.[21] Before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. An agency may take such action by any procedure that is fair under the circumstances if:

> (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
> (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
> (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

This bill revises the laws relating to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, administered by the commission.

Section 1 amends s. 548.002, F.S., to provide definitions or redefine terms to clarify legislative intent, ensure the Department of Business and Professional Regulation (department) is able to enforce ch 548, F.S., and to conform the chapter to current industry standards. This section:

- Amends the definition of "boxing" to mean the unarmed combat sport of fighting by striking with fists.

[20] Section 548.06(5), F.S.
[21] Section 548.073, F.S.

- Repeals the definition of "concessionaire."
- Amends the definition of "contest" and "exhibition" to include the participants' use of other full-contact maneuvers.
- Creates a definition of the term "face value" to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes.
- Creates a definition of the term "full contact" to mean the use of strikes and blows during a match in which the strikes and blows are intended to break the plane of the participant's body, are delivered to the head, face, neck, or body of the receiving participant's body, or cause the receiving participant to move in response to the strikes and blows.
- Repeals the definition of "foreign copromoter."
- Amends the definition of "judge" to provide that the judge is licensed by the Florida State Boxing Commission (commission) and scores a match using a designated scoring system.
- Amends the definition of "kickboxing" to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof in a roped ring. It provides that the term does not include any form of ground fighting techniques.[22]
- Amends the definition of "mixed martial arts" to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,[23] jujitsu, and wrestling.
- Amends the definition of "physician" to mean a person licensed to practice medicine under ch. 458, F.S, or ch. 459, F.S., whose license is unencumbered and in good standing.
- Amends the definition of "promoter" to include "any entity" in addition to "any person" in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships.
- Amends the definition of "purse" to include the professional's share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television.
- Amends the definition of "second" or cornerman" to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition of "unarmed combat" in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

Section 2 amends s. 548.004(1), F.S., modify the duties and responsibilities to be performed by the executive director of the commission, as set forth by the commission. Pursuant to the bill, the executive director must:

- Conduct the functions of the commission office.

[22] Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* http://en.wikipedia.org/wiki/Ground_fighting [Last visited March 8, 2014].
[23] Muay Thai is a combat sport from the muay martial arts of Thailand. *See* http://www.wmcmuaythai.org/about (Last visited March 25, 2014).

- Appoint event and commission officials.
- Approve licenses, permits, and matches.
- Perform other duties as the department or commission deems necessary to fulfill the duties of the position.

The bill authorizes the executive director to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

In addition, the bill repeals the requirement that the commission require electronic recording of all its scheduled proceedings. Section 455.203(7), F.S., also requires all proceedings conducted by the department be electronically recorded.

Section 3 amends s. 548.006(3), F.S., to clarify the commission's existing jurisdiction over professional and amateur boxing, kickboxing, and mixed martial arts matches as well as amateur mixed martial arts matches held in the state.

As with boxing and kickboxing, these changes clarify that the commission has oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida. Nothing in the bill affects the commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

Section 4 amends s. 548.007, F.S., clarify existing exemptions to ch. 548, F.S., as well as create new exemptions from ch. 548, F.S. The exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs.
- A match conducted or sponsored by a company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs who are members of a company or detachment of the Florida National Guard or United States Armed Forces.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs and is held in conjunction with a charitable event.
- A match conducted by or between a public postsecondary education institution or public K-12 school as defined in s. 1000.04, F.S., if the match is limited to amateurs who are members of a school-sponsored club or team.
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.
- A professional or amateur "martial arts activity." As used in this exemption, the term "martial arts" means one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu; however the term does not include mixed martial arts.

The bill eliminates the existing exemption found in s. 548.007(1), F.S., for a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur

participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(6), F.S., which encompasses a larger group of businesses and individuals.

Section 5 repeals s. 548.013, F.S., to eliminate the requirement that foreign copromoters be licensed by the commission. Foreign copromoters are promoters with their licenses located outside of the state of Florida. The commission issues licenses to promoters, regardless of the location of their licensure, and therefore has no licensed foreign copromoters. The also deletes the definition for the term "foreign copromoter" in s. 548.002(10), F.S.

Section 6 amends s. 548.014, F.S., to delete references to the term "foreign copromoters."

Section 7 repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

Section 8 amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission. Additionally, the bill adds promoters to the list of individuals or entities who directly or indirectly act in specific capacities in connection with any match involving a participant and who are required to obtain a license under s. 548.017, F.S.

Section 9 amends s. 548.046(3)(c), F.S., to provide that a participant's failure or refusal to provide a urine sample immediately upon request constitutes an immediate, serious danger to the health, safety, and welfare of the person's opponent. This results in the immediate suspension of the participant's license, rather than a revocation of that license under current law.

The bill also deletes provisions that provide that the loser of a match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who failed to provide a urine sample had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,[24] the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediate suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

Section 10 amends s. 548.052, F.S., to delete references to the term "foreign copromoter."

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

Section 11 amends s. 548.054(2), F.S., to provide that, within 10 days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the commission pursuant to s. 120.569, F.S. Additionally, the bill requires the commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S.

[24] *See* rule 61K1-1.0043, F.A.C.

Section 12 amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the five percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4), F.S. The bill also amends s. 548.06, F.S., to use the term "gross receipts" instead of "total gross receipts."

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the five percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the amount of gross receipts reported to the commission must include the face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to five percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission's written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than five percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than five percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons to whom the commission may authorize promoters to give complimentary tickets. If authorized by the commission, complimentary tickets provided to reserve or active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations would not be included in the calculation of the gross receipts tax.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization from the commission for giving "more than 5 percent complimentary tickets". A promoter must submit an application, on a form adopted by the commission, no later than two business days before the date of the professional event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above five percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed five percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for setting limits on complimentary tickets or determining which portion of the requested percentage above five percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial, approval, or any limitation on the approval. A promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies promoters as the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of $40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of $40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of certain records for one year, including records necessary to justify and support the reports submitted to the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. The commission is authorized to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules establishing a procedure for auditing a promoter's records, for resolving any inconsistencies revealed in the audit, and imposing a late fee if taxes are owed.[25]

Section 13 amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

In addition, the bill requires the general counsel of the department to review the grounds for each emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of an emergency suspension order. The bill repeals the current suspension procedure, including the requirement that the commission must hold a hearing within ten days after the date on which the license or permit is suspended.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.[26]

Section 14 amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act (ch. 120, F.S.). The bill repeals the provision authorizing any member of the commission to hold a hearing and the requirement that, before any adjudication is rendered, a majority of the members of the commission must examine the record and approve the adjudication and order.

Section 15 provides an appropriation of $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of the act during the 2014-2015 fiscal year.

Section 16 provides bill takes effect on July 1, 2014.

[25] Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than $5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

[26] Section 455.275, F.S., provides the procedure for service of a compliant on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the license by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In section 12 of the bill, s. 548.06(2), F.S., is amended to allow promoters to issue complimentary tickets for up to five percent of the seats in the house for an event. If the promoter wants to give or issue additional complimentary tickets, the commission, executive director, or his or her designee must approve any amount in excess of the five percent threshold. The bill's only criteria for the commission's authorization of additional complimentary tickets are for those classes of persons specified in ss. 548.06(2 (c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for the setting of limits on the number or percentage of complimentary tickets or to determine which portion of the requested percentage above five percent that may be authorized. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or approve or deny issuance of complimentary tickets other than as specified in ss. 548.06(2)(a)-(c), F.S., the authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principle of separation of powers in Article II, s. 3, Florida Constitution.[27] When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.[28] The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.[29] The bill may constitute and unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of its actions.

[27] *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).
[28] *Askew v. Cross Key Waterways*, 372 So. 2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So. 2d 357 (Fla. 1st DCA 1996).
[29] *Florida Home Builders Association v. Division of Labor*, 367 So. 2d 219 (Fla. 1979).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under CS/SB 810, the deregulation of concessionaires and booking agents, and lower post-event tax payments is anticipated to reduce the commission's revenues by $95,750.[30] That revenue, in part, currently supports the commission's operations. Any additional revenues from late fees on post-event taxes and pay-per-view taxes are indeterminate, but expected to be insignificant.

Late Fees

The bill directs the commission to adopt a rule imposing a late fee on taxes owed the commission. Any revenue collections based on imposing a late fee on post-event taxes are expected to be insignificant. The commission estimated in 2013 that had a late fee been imposed in Fiscal Year 2011-2012, the fee revenues collected would have been approximately $6,915.[31] The fee revenue estimate is based on total post-event taxes collected of $115,258, a 10 percent penalty imposed, with 60 percent of estimated tax reports being filed late. The commission indicated with the implementation of accountability measures in 2013, the amount of post-event tax collections which are received late will likely decline in future years, thereby reducing any late fee revenues from the estimated Fiscal Year 2011-2012 collection amount.

Pay-Per-View Tax

The bill provides that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. The bill effectively reinstates part of the "pay-per-view tax" for in-state matches, which was eliminated in 2012. However, the bill only reinstates the tax on matches held within the state of Florida, not the tax on pay-per-view for matches held outside of Florida.

The commission indicated that pay-per-view matches occurring within the state of Florida generated $1,484 in Fiscal Year 2009-2010 and $2,138 in Fiscal Year 2010-2011.[32] The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

Deregulation of Booking Agents

The bill provides that booking agents and concessionaires would no longer need to obtain licensure from the Commission in order to practice in their field. The department

[30] *2014 Legislative Bill Analysis for CS/SB 810*, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).
[31] Department of Business and Professional Regulation, Estimated post-event tax penalties for late fees, correspondence with staff of the General Government Appropriations Subcommittee, March 14, 2013, (on file with the subcommittee).
[32] Department of Business and Professional Regulation, total revenue from pay-per-view matches occurring within the state of Florida, FY 2009-10 and 2010-11, correspondence with staff of the Business & Professional Regulation Subcommittee, March 7, 2014, (on file with the General Government Appropriations Subcommittee).

estimates a reduction in revenue from loss of licensure fees for booking agents to be approximately $150 per year.[33]

Concessions

The bill eliminates receipts from concessions from the calculation of gross receipts for the promoters' tax liability purposes. Additionally, the bill deregulates concessionaires. The department estimates a reduction to post-event taxes related to concessions of approximately $55,000 per year.[34] Furthermore, the department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately $600 per year.[35]

Complimentary Tickets

The bill provides that complimentary tickets for up to five percent of the seating capacity of the house are not included in gross receipts or the corresponding post-event taxes. The department estimates, based on a review of prior year data, that the commission would collect $40,000 less in post-event taxes related to the issuance of complimentary tickets.[36] The department's estimate is based on the assumption that promoters would not issue complimentary tickets in excess of that percentage. The department did not provide an estimate to cover any complimentary tickets granted over the five percent, if the promoter obtains authorization from the commission to issue more.

Promoters often issue complimentary tickets when the tickets have not sold prior to the event in order to recoup some cost through the sales of concessions to the individuals who receive the complimentary tickets. Often the complimentary tickets issued would never have sold prior to the event date. The commission would not have included the unsold tickets in the gross receipts and would not have received the five percent post-event tax for the sale of the tickets.

B. Private Sector Impact:

The bill deletes the licensure requirements for concessionaires and booking agents. The current license fee for concessionaires is $100; the fee is $75 for booking agents. Concessionaires would also not be required to report and pay taxes on gross receipts.

Additionally, permitting five percent of seats in a house be issued as complimentary tickets without being included in gross receipts or paying post-event taxes on the tickets lowers the costs of holding events in the state of Florida.

[33] *2014 Legislative Bill Analysis for CS/SB 810*, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).
[34] *Id*.
[35] *Id*.
[36] *Id.*

C. Government Sector Impact:

The department anticipates a loss in taxation and licensure fee revenue of $95,750.[37] In addition, as a result of the estimated $95,750 reduction in taxes and license fees, there will be a $7,660 annual reduction in the service charge paid to the General Revenue Fund.[38] The bill appropriates $111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year in order to offset this expected revenue loss.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.014, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

This bill repeals the following sections of the Florida Statutes: 548.013 and 548.015.

IX. Additional Information:

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

CS by Regulated Industries on March 13, 2014:
The committee substitute differs from the underlying bill in that it makes:

- Technical changes throughout the bill.
- Removes the concept of foreign copromoters from chapter 548, F.S.
- Expressly provides that disciplinary action by the Florida State Boxing Commission must comply with chapter 120, F.S., the Administrative Procedure Act.
- Establishes procedures for a promoter to seek the approval of the commission to issue complimentary tickets to an event in excess of a five percent threshold and avoid liability for gross receipts taxes that would otherwise apply to the tickets.
- Provides that a promoter who pays the maximum tax applicable to the sale or lease of broadcast rights is not required to disclose to the commission the price charged for the sale of the broadcast rights.

[37] *Id*.
[38] *Id*.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Galvano

580-02556A-14 2014810c1

A bill to be entitled

An act relating to pugilistic exhibitions; amending s. 548.002, F.S.; revising definitions; amending s. 548.004, F.S.; revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; amending s. 548.006, F.S.; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; amending s. 548.007, F.S.; revising applicability of ch. 548, F.S.; repealing s. 548.013, F.S.; relating to foreign copromoter license requirement; amending s. 548.014, F.S.; deleting references to foreign copromoters; repealing s. 548.015, F.S., relating to the authority of the commission to require a concessionaire to file a form of security with the commission; amending s. 548.017, F.S.; deleting a requirement for the licensure of concessionaires; amending s. 548.046, F.S.; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; amending s. 548.052, F.S.; deleting a reference to foreign copromoters; amending s. 548.054, F.S.; revising procedures and requirements for requesting a hearing following the withholding of a purse; amending s. 548.06, F.S.; specifying a circumstance under which a report is not

580-02556A-14 2014810c1

required to be filed with the commission; revising the calculation of gross receipts that are required to be filed in a report to the commission; requiring promoters to retain specified documents and records; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter; requiring the commission to adopt rules; amending s. 548.07, F.S.; revising the procedure for suspension of licensure; amending s. 548.073, F.S.; requiring that commission hearings be held in accordance with ch. 120, F.S.; providing an appropriation; providing an effective date.

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

Section 1. Section 548.002, Florida Statutes, is amended to read:

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for the expenses of training or for participating in a match, other than a prize of $50 or less in value ~~or less~~.

(2) "Amateur sanctioning organization" means a ~~any~~ business entity organized for sanctioning and supervising matches involving amateurs.

(3) "Boxing" means the unarmed combat sport of fighting by striking with fists ~~to compete with the fists~~.

(4) "Commission" means the Florida State Boxing Commission.

~~(5) "Concessionaire" means any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.~~

(5)~~(6)~~ "Contest" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive ~~earnestly~~ to win using~~, but not necessarily being limited to,~~ strikes and blows to the head or other full-contact maneuvers.

(6)~~(7)~~ "Department" means the Department of Business and Professional Regulation.

(7)~~(8)~~ "Event" means one or more matches comprising a show.

(8)~~(9)~~ "Exhibition" means a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using~~, but not necessarily being limited to,~~ strikes and blows to the head or other full-contact maneuvers.

(9) "Face value" means the dollar value of a ticket equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes are not included in the face value.

(10) "Full contact" means the use of strikes and blows during a match which:

(a) Are intended to break the plane of the receiving participant or amateur's body;

(b) Are delivered to the head, face, neck, or body of the

receiving participant or amateur; and

(c) Cause the receiving participant or amateur to move in response to the strike or blow.

~~(10) "Foreign copromoter" means a promoter who has no place of business within this state.~~

(11) "Judge" means a person licensed by the commission who evaluates and scores a match using a designated scoring system ~~who has a vote in determining the winner of any contest~~.

(12) "Kickboxing" means the unarmed combat sport of fighting by striking ~~to compete~~ with the fists, hands, feet, legs, or any combination thereof~~, and includes "punchkick" and other similar competitions~~. The term does not include any form of ground fighting techniques.

(13) "Manager" means a ~~any~~ person who, directly or indirectly, controls or administers the boxing, kickboxing, or mixed martial arts affairs of a ~~any~~ participant.

(14) "Match" means a ~~any~~ contest or exhibition.

(15) "Matchmaker" means a person who brings together professionals or arranges matches for professionals.

(16) "Mixed martial arts" means the unarmed combat sport involving the use~~, subject to any applicable limitations set forth in this chapter,~~ of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling ~~grappling, kicking, and striking~~.

(17) "Participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match.

(18) "Physician" means a person who is approved by the

commission, who is ~~an individual~~ licensed to practice medicine under chapter 458 or chapter 459, and whose license is unencumbered and in good standing ~~to practice medicine and surgery in this state~~.

(19) "Professional" means a person who has received or competed for a ~~any~~ purse or other article of a value greater than $50, either for the expenses of training or for participating in a ~~any~~ match.

(20) "Promoter" means a ~~any~~ person or entity, including an ~~and includes any~~ officer, director, trustee, partner ~~employee~~, or owner ~~stockholder~~ of a corporate promoter or promoter partnership, who produces, arranges, or stages a ~~any~~ match involving a professional.

(21) "Purse" means the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional's share of any payment received for radio broadcasting and~~,~~ television, including pay-per-view or closed circuit ~~and motion picture rights~~.

(22) "Second" or "cornerman" means a person who assists a ~~the match~~ participant in preparing for a match and between rounds, and who maintains the corner of a ~~the~~ participant during a ~~the~~ match.

(23) "Secretary" means the Secretary of Business and Professional Regulation.

(24) "Unarmed combat" means a form of competition in which a strike or blow is struck which may reasonably be expected to inflict injury.

Section 2. Section 548.004, Florida Statutes, is amended to read:

548.004 Executive director; duties, compensation, administrative support.—

(1) The department shall employ an executive director with the approval of the commission. The executive director shall serve at the pleasure of the secretary. The executive director or his or her designee shall perform the duties specified by the commission, including conducting the functions of the commission office; appointing event and commission officials; approving licenses, permits, and matches; and performing any ~~keep a record of all proceedings of the commission; shall preserve all books, papers, and documents pertaining to the business of the commission; shall prepare any notices and papers required; shall appoint judges, referees, and other officials as delegated by the commission and pursuant to this chapter and rules of the commission; and shall perform such~~ other duties as the department or commission deems necessary to fulfill the duties of the position ~~directs~~. The executive director may issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

~~(2) The commission shall require electronic recording of all scheduled proceedings of the commission.~~

(2)~~(3)~~ The department shall provide assistance in budget development and budget submission for state funding requests. The department shall submit an annual balanced legislative budget for the commission which is based upon anticipated revenue. The department shall provide technical assistance and administrative support, if requested or determined necessary ~~needed~~, to the commission and its executive director on issues relating to personnel, contracting, property management, or

other issues identified as important to performing the duties of this chapter and to protecting the interests of the state.

Section 3. Section 548.006, Florida Statutes, is amended to read:

548.006 Power of commission to control professional and amateur boxing, kickboxing, and mixed martial arts matches ~~pugilistic contests and exhibitions~~; certification of competitiveness of professional mixed martial arts and kickboxing matches.—

(1) The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held within the state which involves a professional.

(2) As to professional mixed martial arts and kickboxing, until a central repository of match records for each exists and is approved by the commission, the matchmaker shall certify as to the competitiveness of each match.

(3) The commission has exclusive jurisdiction over approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, ~~and~~ kickboxing, and mixed martial arts matches held in this state.

(4) Professional and amateur matches shall be held in accordance with this chapter and the rules adopted by the commission.

Section 4. Section 548.007, Florida Statutes, is amended to read:

548.007 Exemptions.—This chapter does ~~Applicability of provisions to amateur matches and certain other matches or events.—Sections 548.001-548.079 do~~ not apply to any of the

following:

(1) A match that does not allow full contact ~~conducted or sponsored by a bona fide nonprofit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing~~, if the match ~~held in conjunction with the instruction~~ is limited to amateur participants. ~~who are students of the school or instructional program;~~

(2) A match conducted or sponsored by a ~~any~~ company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs ~~participants~~ who are members of a ~~the~~ company or detachment of the Florida National Guard or United States Armed Forces.~~; or~~

(3) A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs ~~amateur participants~~ and is held in conjunction with a charitable event.

(4) A match conducted by or between public postsecondary educational institutions or public K-12 schools, as defined in s. 1000.04, if the match is limited to amateurs who are members of a school-sponsored club or team.

(5) A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.

(6) A professional or amateur martial arts activity. As used in this subsection, the term "martial arts" means one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu. The term

does not include mixed martial arts.

Section 5. Section 548.013, Florida Statutes, is repealed.

Section 6. Subsections (1) and (2) of section 548.014, Florida Statutes, are amended to read:

548.014 Promoters ~~and foreign copromoters~~; bonds or other security.—

(1)(a) Before any license is issued or renewed to a promoter ~~or foreign copromoter~~ and before any permit is issued to a promoter ~~or foreign copromoter~~, she or he must file a surety bond with the commission in such reasonable amount, but not less than $15,000, as the commission determines.

(b) All bonds must be upon forms approved and supplied by the commission.

(c) The sufficiency of any surety is subject to approval of the commission.

(d) The surety bond must be conditioned upon the faithful performance by the promoter ~~or foreign copromoter~~ of her or his obligations under this chapter and upon the fulfillment of her or his contracts with any other licensees under this chapter. However, the aggregate annual liability of the surety for all obligations and fees may not exceed the amount of the bond.

(2) In lieu of a surety bond, the promoter ~~or foreign copromoter~~ may deposit with the commission cash or a certified check, in an equivalent amount and subject to the same conditions as the bond. Such security may not be returned to the promoter until 1 year after the date on which it was deposited with the commission unless a surety bond is substituted for it. If no claim against the deposit is outstanding, it shall be returned to the depositor 1 year after the date it was

deposited.

Section 7. Section 548.015, Florida Statutes, is repealed.

Section 8. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

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

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

Section 9. Paragraph (c) of subsection (3) of section 548.046, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

548.046 Physician's attendance at match; examinations; cancellation of match.—

(3)

(c) A participant who fails or refuses ~~Failure or refusal~~ to provide a urine sample immediately upon request shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. If a participant fails or refuses to provide a urine sample, his or her license shall be immediately suspended pursuant to

s.120.60(6), and such failure or refusal is grounds for additional disciplinary action ~~result in the revocation of the participant's license~~. ~~Any participant who has been adjudged the loser of a match and who subsequently refuses to or is unable to provide a urine sample shall forfeit his or her share of the purse to the commission~~. A ~~Any~~ participant who is adjudged the winner of a match and who subsequently refuses to or is unable to provide a urine sample forfeits ~~shall forfeit~~ the win ~~and shall not be allowed to engage in any future match in the state~~. The decision shall be changed to a no-decision result and ~~shall be~~ entered into the official record ~~as the result of the match~~. The purse shall be redistributed as though the participant found to be in violation of this subsection had lost the match. ~~If redistribution of the purse is not necessary or after redistribution of the purse is completed, the participant found to be in violation of this subsection shall forfeit his or her share of the purse to the commission.~~

(d) If a participant tests positive for a prohibited substance as specified by commission rule, the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participant's license shall be immediately suspended pursuant to s. 120.60(6), and subject to additional disciplinary action.

Section 10. Section 548.052, Florida Statutes, is amended to read:

548.052 Payment of advances by promoter ~~or foreign copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not pay, lend, or give a participant an advance against her or his purse before a contest, except with the prior written permission

of the commission or the executive director, or his or her designee ~~a commissioner~~; and, if permitted, such advance may be made only for expenses for transportation and maintenance in preparation for a contest.

Section 11. Subsection (2) of section 548.054, Florida Statutes, is amended to read:

548.054 Withholding of purses; hearing; disposition of withheld purse forfeiture.—

(2) Any purse so withheld shall be delivered by the promoter to the commission upon demand. Within 10 days after the match, the person from whom the sum was withheld may submit a petition for a hearing to the commission pursuant to s. 120.569 ~~apply in writing to the commission for a hearing~~. Upon receipt of the petition ~~application~~, the commission shall hold ~~shall fix a date for~~ a hearing pursuant to ss. 120.569 and 120.57. ~~Within 10 days after the hearing or after 10 days following the match,~~ If no petition ~~application~~ for a hearing is filed, the commission shall meet and determine the disposition ~~to be made~~ of the withheld purse. If the commission finds the charges sufficient, it may declare all or ~~any~~ part of the funds forfeited. If the commission finds the charges insufficient ~~not sufficient upon which to base a withholding order~~, it shall immediately distribute the withheld funds to the appropriate persons ~~entitled thereto~~.

Section 12. Section 548.06, Florida Statutes, is amended to read:

548.06 Payments to state; exemptions; audit of records.—

(1) Except as provided in subsection (4), a promoter holding a match shall, within 72 hours after the match, file

with the commission a written report that ~~which~~ includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require. For the purposes of this chapter, ~~total~~ gross receipts include each of the following:

(a) The gross price charged for the sale or lease of broadcasting, television, and pay-per-view ~~motion picture~~ rights of any match occurring within the state without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges.~~;~~

~~(b) The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;~~

(b) ~~(c)~~ The face value of all tickets sold and complimentary tickets issued, provided, or given above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).~~; and~~

(c) ~~(d)~~ The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promotion of an event.

(2) A promoter may issue, provide, or give complimentary tickets for up to 5 percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which complimentary tickets are issued, without including the face value of such tickets issued, provided, or given, in gross receipts, and without paying the taxes required in subsection (4). If a promoter wishes to issue, provide, or give complimentary tickets for more than 5 percent of the seats in the house designated for use in the event without including the face value of such tickets issued, provided, or given, in gross receipts, the promoter must obtain

written authorization from the commission or the executive director, or his or her designee ~~Where the rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission are in whole owned by, sold to, acquired by, or held by any person who intends to or subsequently sells or, in some other manner, extends such rights in part to another, such person is deemed to be a promoter and must be licensed as such in this state. Such person shall, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.~~

(a) The commission may not consider complimentary tickets that it authorizes under this subsection as part of the total gross receipts from admission fees.

(b) A promoter may issue, provide, or give complimentary tickets for more than 5 percent of the seats in the house designated for use in the event without obtaining written authorization from the commission, the executive director, or his or her designee if the promoter includes the face value of such tickets issued, provided, or given over 5 percent of the seats in the house designated for use in the event in gross receipts and pays the taxes as required in subsection (4).

(c) The commission, the executive director, or his or her designee, may authorize more than 5 percent of the tickets to be issued as complimentary tickets to the following:

1. Reserve or active members of the United States Armed Forces or National Guard;

2. A veteran, as defined in s. 1.01(14). The veteran need

not have served during wartime periods of service as listed under s. 1.01(14) or in a campaign or expedition for which a campaign badge has been authorized; and

3. Not-for-profit organizations with tax-exempt status pursuant to s. 501(c)(3) of the United States Internal Revenue Code.

(d) A promoter who wishes to obtain authorization to issue more than 5 percent complimentary tickets shall:

1. Submit an application adopted by the commission no later than 2 business days before the date of the professional event. The application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

2. Maintain documentation evidencing that the tickets were given to individuals or entities that fall into the categories listed in paragraph (c). These documents are subject to auditing requirements as set forth in subsection (7).

(e) The commission, executive director, or his or her designee shall deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The commission, executive director, or his or her designee shall provide the decision in writing to the promoter at least 1 business day before the start of the event, with an explanation for the denial or approval and an explanation for any limitation on the approval. The promoter

remains responsible for complying with other reporting and taxation requirements as set forth in this chapter.

~~(3) A concessionaire shall, within 72 hours after the match, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.~~

(3)~~(4)~~ A ~~Any~~ written report required to be filed with the commission under this section must ~~shall~~ be postmarked within 72 hours after the conclusion of the match, and an additional 5 days is ~~shall be~~ allowed for mailing.

(4)~~(5)~~ Each ~~the~~ written report must ~~shall~~ be accompanied by a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes, except that the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and pay-per-view ~~motion picture~~ rights of any match occurring within the state may ~~shall~~ not exceed $40,000 for a ~~any~~ single event. If a promoter remits the maximum tax amount of $40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of $40,000 has been remitted for such taxes on a form provided by the commission. The promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

(5)~~(6)~~(a) A ~~Any~~ promoter who willfully makes a false and fraudulent report under this section commits ~~is guilty of~~ perjury and, upon conviction, is subject to punishment as provided by law. Such penalty is ~~shall be~~ in addition to any

other penalties imposed under ~~by~~ this chapter.

(b) A ~~Any~~ promoter who willfully fails, neglects, or refuses to make a report or to pay the taxes as prescribed or who refuses to allow the commission to examine the books, papers, and records of a ~~any~~ promotion commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) A promoter shall retain a copy of the following records for 1 year and provide a copy of the following records to the commission upon request:

(a) Records necessary to support each report submitted to the commission, including a copy of any report filed with the commission.

(b) A copy of each independently prepared ticket manifest.

(c) Documentation verifying the issuance of complimentary tickets approved by the commission pursuant to subsection (2) to individuals or entities which meet the requirements as set forth in paragraph (2)(c).

(7) Compliance with this section is subject to verification by department or commission audit. The commission may, upon reasonable notice to the promoter, audit a promoter's books and records relating to the promoter's operations under this chapter.

(8) The commission shall adopt rules establishing a procedure for auditing a promoter's records and resolving any inconsistencies revealed by an audit and shall adopt a rule imposing a late fee in the event of taxes owed.

Section 13. Section 548.07, Florida Statutes, is amended to read:

548.07 Suspension of license or permit by commissioner; hearing.—

(1) The commission or the executive director, or his or her designee, may issue an emergency suspension order pursuant to s. 120.60(6), suspending the license of any person or entity licensed under this chapter who poses an immediate, serious danger to the health, safety, and welfare of the public or the participants in a match.

(2) The department's Office of General Counsel shall review the grounds for each emergency suspension order issued and, if sufficient, shall file an administrative complaint against the licensee within 21 days after the issuance of the emergency suspension order.

(3) After service of the administrative complaint pursuant to the procedure of s. 455.275, the disciplinary process shall proceed pursuant to chapter 120. ~~Notwithstanding any provision of chapter 120, any member of the commission may, upon her or his own motion or upon the verified written complaint of any person charging a licensee or permittee with violating this chapter, suspend any license or permit until final determination by the commission if such action is necessary to protect the public welfare and the best interests of the sport. The commission shall hold a hearing within 10 days after the date on which the license or permit is suspended.~~

Section 14. Section 548.073, Florida Statutes, is amended to read:

548.073 Commission hearings.—All hearings held under this chapter shall be held in accordance with chapter 120. ~~Notwithstanding the provisions of chapter 120, any member of the~~

~~commission may conduct a hearing~~. ~~Before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.~~

Section 15. The sum of $111,000 in recurring funds is appropriated from the General Revenue Fund to the Department of Business and Professional Regulation for the implementation of this act by the Florida State Boxing Commission during the 2014-2015 fiscal year.

Section 16. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 10, 2014

Senator Joe Negron
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/SB 810, Pugilistic Exhibitions, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic _____ Bill Number 810 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 876
INTRODUCER:	Transportation Committee and Senator Galvano
SUBJECT:	Motor Vehicle Crash Reports
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Carey	Martin	ATD	**Favorable**
3.	Carey	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 876 relates to motor vehicle crash reports, and requires a sworn statement from the requestor for *each* individual crash report which is requested within the 60-day confidential and exempt period.

The bill has no fiscal impact.

II. Present Situation:

Traffic Crash Reports

A Florida Traffic Crash Report Long Form must be completed and submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) within ten days after law enforcement completes an investigation of a motor vehicle crash that:

- Resulted in death, personal injury or any indication of pain or discomfort of any passengers involved in the crash;
- Resulted in damage to a vehicle or other property;[1]
- Resulted in a driving under the influence violation;[2]
- Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the crash scene; or

[1] Section 316.061(1)(a), Florida Statutes.
[2] Section 316.193, Florida Statutes.

- Involved a commercial motor vehicle.

If the circumstances of the crash, as described above, do not require completion of the long form crash report, the law enforcement officer is required to complete a short-form crash report or provide a driver exchange-of-information form. The driver exchange-of-information form is completed by all drivers and passengers involved in the crash and requires the identification of each vehicle involved in the incident.

The information included on a crash report (both long and short form) must include:
- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of the investigating officer; and
- Respective parties insurance companies;

Both long and short form crash reports prepared by a law enforcement officer must be submitted to the DHSMV and may be maintained by the law enforcement officer's agency.

Section 316.066, (2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and held by any agency regularly receiving or preparing information from or concerning parties to motor vehicle crashes are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, for a period of 60 days after the date the report is filed.

Crash reports held by an agency may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.,[3],[4] and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

A person attempting to access a crash report within the 60 days after the date the report was filed must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access, and file a written sworn statement with the state or local agency in possession of the information stating that information

[3] http://www.flsenate.gov/Laws/Statutes/2013/50.011
[4] http://www.flsenate.gov/Laws/Statutes/2013/50.031

from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt. In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such a contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

The primary policy reason for closing access to crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal solicitation by attorneys. In its 2000 report on insurance fraud relating to personal injury protection coverage, the Fifteenth Statewide Grand Jury found that individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud.

According to the Attorney General's Second Interim Report of the Fifteenth Statewide Grand Jury:

> probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.

The Grand Jury found the access to crash reports, which provide individuals with the ability to contact large numbers of potential clients, is a violation of Florida's prohibition of crash report use for commercial solicitation purposes. According to the Grand Jury, virtually anyone involved in a car accident in the state is fair game to the intrusive and harassing tactics of solicitors.[5]

III. Effect of Proposed Changes:

Section 1 amends s. 316.066, F.S., to require a person who accesses a crash report within the required 60-day confidential and exempt period to file a written sworn statement with the state or local agency in possession of the requested information for *each* individual crash report that is being requested.

Section 2 provides that the bill shall be effective July 1, 2014.

[5] Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

IX. Additional Information:

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

CS by Transportation on March 13, 2014:
The CS removes the requirement directing the department to design a notice to be delivered via first-class mail or in person to all parties involved in a motor vehicle crash, where a traffic crash report is filed.

B. Amendments:

None.

By the Committee on Transportation; and Senator Galvano

596-02559-14 2014876c1

A bill to be entitled

An act relating to motor vehicle crash reports; amending s. 316.066, F.S.; requiring a statement to be completed and sworn to for each confidential crash report requested within a certain time period; providing an effective date.

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

Section 1. Subsection (2) of section 316.066, Florida Statutes, is amended to read:

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal

596-02559-14 2014876c1

Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

(c) Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

(d) As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information~~,~~ and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt. Such written sworn statement must be completed and sworn to by the requesting

party for each individual crash report that is being requested within 60 days after the report is filed. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/28/2014
Meeting Date

Topic _____ Bill Number 876 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ~~For~~ ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 24, 2014
Meeting Date

Topic Motor Vehicle Crash Reports

Bill Number SB 876 *(if applicable)*

Name Tom Tatum

Amendment Barcode *(if applicable)*

Job Title Sergeant

Address 123 W. Indiana Ave *Street*

Phone 386-736-5961

DeLand, FL 32720 *City* *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Sheriff's Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 886
INTRODUCER:	Senator Montford
SUBJECT:	Florida Teachers Classroom Supply Assistance Program
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Favorable**
3.	Elwell	Kynoch	AP	**Favorable**

I. Summary:

SB 886 revises provisions of the Florida Teachers Classroom Supply Assistance Program (Program) and provides flexibility for school districts to distribute funds to classroom teachers sooner for the purchase of supplemental materials and supplies.

The bill requires school districts to calculate an identical amount from the funds available to the school districts for the program for each classroom teacher to be employed by the district or a charter school in the district on September 1st of each year. The district school board and each charter school board may provide a classroom teacher his or her proportional share of program funds by August 1st, if determined eligible for program funds by July 1st. A teacher determined eligible for Program funds after July 1st must be provided with his or her proportional share of Program funds by September 30th. At present, program funds must be disbursed by September 30th.

This bill does not affect the total funds allocated for the Program and does not have a fiscal impact to the state.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Florida Teachers Classroom Supply Assistance Program

The Florida Teachers Classroom Supply Assistance Program (Program) provides funds for classroom teachers to purchase supplemental materials and supplies for public school students assigned to them.[1] Program funds are appropriated by the Legislature in the General

[1] Section 1012.71, F.S.

Appropriations Act and distributed to each school district by the Commissioner of Education based on each district's unweighted full-time equivalent student enrollment.[2] The district school board calculates and distributes each classroom teacher's proportionate share of funds by September 30th of each year.[3]

A signed statement acknowledging receipt of the funds is required of each classroom teacher.[4] Additionally, a teacher must keep receipts for at least four years to show that funds were spent in accordance with Program requirements.[5] Any unused funds must be returned to the district school board at the end of the school year.[6]

Senate Bill 2500, the 2014-2015 proposed General Appropriations Bill, appropriates $45,286,750 to the Program, which is the same as the 2013-2014 fiscal year appropriation.[7]

III. Effect of Proposed Changes:

The bill revises provisions of the Florida Teachers Classroom Supply Assistance Program to allow school districts to have the flexibility to distribute funds to classroom teachers sooner for the purchase of supplemental materials and supplies for public school students assigned to them.

The bill requires school districts to calculate an identical amount from the funds available to the school districts for the program for each classroom teacher who will be employed by the district or a charter school in the district on September 1st. As of July 1st, if a teacher is expected to be employed by a school district or a charter school in the district on September 1st, the district school board and each charter school board may provide the teacher with the teacher's proportionate share of funds by August 1st. If a teacher's expected employment is determined after July 1st, the district school board and each charter school board must provide the teacher with the teacher's proportionate share of funds by September 30th. At present, funds from the Florida Teachers Classroom Supply Assistance Program must be distributed by September 30th.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[2] Section 1012.71(2), F.S. Funds from the Program may not be used to purchase equipment. *Id.*
[3] Section 1012.71(3), F.S. The funds are distributed by any appropriate means as determined by the district school board. *Id.*
[4] Section 1012.71(4), F.S.
[5] *Id.*
[6] *Id.* "[F]unds that are returned to the district board shall be deposited into the school advisory council account of the school at which the classroom teacher returning the funds was employed when that teacher received the funds or deposited into the Florida Teachers Classroom Supply Assistance Program account of the school district in which a charter school is sponsored, as applicable." *Id.*
[7] Specific Appropriation 87, s. 2, ch. 2013-40, L.O.F. (providing the amount appropriated to the Teachers Lead Program under Specific Appropriations 7 and 87); *see also* Specific Appropriation 7, s. 1 ch. 2013-40, L.O.F. The Program was originally named the Florida Teachers Lead Program and was renamed the Florida Teachers Classroom Supply Assistance Program in 2013. Section 10, ch. 2013-185, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 886 does not have a fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1012.71 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Montford

3-00881A-14 2014886__

A bill to be entitled

An act relating to the Florida Teachers Classroom Supply Assistance Program; amending s. 1012.71, F.S.; revising procedures for distributing program funds to classroom teachers; providing an effective date.

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

Section 1. Subsection (3) of section 1012.71, Florida Statutes, is amended to read:

1012.71 The Florida Teachers Classroom Supply Assistance Program.—

(3) From the funds allocated to each school district and any funds received from local contributions for the Florida Teachers Classroom Supply Assistance Program, the district school board shall calculate an identical amount for each classroom teacher who is expected to be employed by the school district or a charter school in the district on September 1 of each year, which is that teacher's proportionate share of the total amount allocated to the district from state funds and funds received from local contributions. A job-share classroom teacher may receive a prorated share of the amount provided to a full-time classroom teacher. For a classroom teacher determined eligible on July 1, the district school board and each charter school board may provide the teacher with his or her total proportionate share by August 1 based on the estimate of the number of teachers who will be employed on September 1. For a classroom teacher determined eligible after July 1, the district school board and each charter school board shall provide the

3-00881A-14 2014886__

~~each classroom~~ teacher with his or her total proportionate share by September 30. The proportionate share may be provided ~~of each year~~ by any means determined appropriate by the district school board or charter school board, including, but not limited to, direct deposit, check, debit card, or purchasing card. If a debit card is used, an identifier must be placed on the front of the debit card which clearly indicates that the card has been issued for the Florida Teachers Classroom Supply Assistance Program. Expenditures under the program are not subject to state or local competitive bidding requirements. Funds received by a classroom teacher do not affect wages, hours, or terms and conditions of employment and, therefore, are not subject to collective bargaining. Any classroom teacher may decline receipt of or return the funds without explanation or cause.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

April 14, 2014

Senator Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
Tallahassee, Florida 32399-1100

Dear Chairman Negron:

I respectfully request that the following bill(s) be scheduled for a hearing before the Senate Full Appropriations Committee:

SB 628 Education Facilities Financing
SB 886 Florida Teachers Supply Assistance Program
SB 908 Education Funding
SB 1202 Career Centers and Charter Technical Career Centers
SB 1206 Agricultural Industry Certifications

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

Sincerely,

William "Bill" Montford
State Senator, District 3

Cc Cindy Kynoch Staff Director

WM/md

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic _____ Bill Number 886 *(if applicable)*

Name Brian P. Hs Amendment Barcode _____ *(if applicable)*

Job Title Trustee

Address 1119 Newton Ave S Phone 727/897-9291
Street

St. Petersburg FL 33705 E-mail justice2jesus@yahoo.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Justice-2-Jesus

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 972
INTRODUCER:	Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Galvano and Bradley
SUBJECT:	Attorneys for Dependent Children with Special Needs
DATE:	April 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Harkness	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 972 requires the court to appoint an attorney for any dependent children who have certain special needs.

A dependent child will qualify for an attorney if he or she:
- Already lives in, or is being considered for placement in a skilled nursing facility;
- Is prescribed a psychotropic medication but does not assent to take it;
- Has a developmental disability;
- Already lives in, or is being considered for placement in a residential treatment center; or
- Is a victim of human trafficking.

The bill requires the court to ask the statewide guardian ad litem office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The attorney must be available for services within 15 days of the court's request. If, however, the statewide guardian ad litem does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney. Any appointment by the court must be in writing.

The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court

permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.

The bill requires that, except for attorneys working pro bono, adequate compensation must be provided to attorneys appointed to represent dependent children with disabilities and access to funding for expert witnesses, depositions, and other costs of litigation. Payment of attorneys is subject to appropriation and to review by the Justice Administrative Commission (JAC) for reasonableness. Fees are capped at $1,000 per child per year. The bill requires the JAC to contract with all attorneys appointed by the court.

The bill requires the Department of Children and Families (DCF) to develop procedures for use in identifying a dependent child with qualifying special needs. The DCF is authorized to adopt rules for this purpose.

The bill preserves the power of the court to appoint an attorney for any dependent child under chapter 39, F.S.

The bill has a recurring fiscal impact of approximately $1.58 million a year based upon the Department of Children and Families' estimate of the number of dependent children who will qualify for an attorney pursuant to the bill's provisions.

II. Present Situation:

Dependent Children

A child that is determined by a court to be a dependent child, is a child who is dependent on the state for care and protection.[1] A child the court finds dependent is a child found:

- To have been abandoned, abused, or neglected by parents or legal custodians;
- To have been surrendered to the Department of Children & Family Services (DCF) or a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, or the DCF, and after being placed a case plan expired and the parents or legal custodian failed to substantially comply with the plan;
- To have been voluntarily placed with a licensed child-placing agency for adoption and a parent or parents have signed a consent;
- To have no parent or legal custodians capable of providing supervision and care;
- To be at substantial risk of imminent abuse, abandonment or neglect by the parents or legal custodians; or
- To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing necessary and appropriate supervision and care.[2]

[1] *See In re M.F.*, 770 So. 2d 1189, 1193 (Fla. 2000) (stating that the "purpose of a dependency proceeding is not to punish the offending parent but to protect and care for a child who has been neglected, abandoned, or abused").
[2] Section 39.01(15), F.S.

The dependency process in Florida begins with a call to the Florida Abuse Hotline (hotline).[3] If accepted by the hotline, the call is referred to a child protective investigator, who conducts an on-site investigation of the allegations of abuse, neglect, or abandonment.[4] If warranted, a dependency petition is filed with the court by DCF.[5] A child may be taken into custody and placed in a shelter without a prior hearing if there is probable cause of imminent danger or injury to the child, the parent or legal custodian, responsible adult relative has materially violated a condition of placement, or the child has no parent, legal custodian, or responsible adult relative immediately known and able to provide supervision and care.[6] In that instance, a judicial hearing must be held within 24 hours after removal of the child from the home.[7] A Guardian ad Litem must be appointed at the time of the shelter hearing.[8] If needed, an Attorney ad Litem may be appointed at this time as well.[9]

If a petition for dependency is filed, whether or not the child is taken into custody, the circuit court assigned to hear dependency cases (dependency court) will schedule an adjudicatory hearing to determine whether the child is dependent, based on a preponderance of the evidence.[10] If a court finds a child dependent, a disposition hearing is held to determine appropriate services and placement settings for the child.[11] At this hearing, the court also reviews and approves a case plan outlining services and desired goals for the child.[12]

The dependency court holds periodic judicial reviews to determine the child's status, progress in following the case plan, and the status of the goals and objectives of the case plan. These reviews will generally occur every six months.[13] If after 12 months, case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.[14]

Lawyers for Children in the Dependency System

While all parents in dependency court are entitled to counsel, and indigent parents are entitled to appointed counsel,[15] no provision in Florida law or rule requires appointment of counsel for dependent children, with a few exceptions, including children placed in a skilled nursing facility[16] and children facing involuntary commitment for mental health treatment under the

[3] Section 39.201(2)(a), F.S.
[4] Section 39.301(1), F.S.
[5] Section 39.501(1) and (3)(c), F.S.
[6] Section 39.402(1), F.S.
[7] Section 39.402(8)(a), F.S.
[8] Section 39.822(1), F.S.
[9] The term "ad Litem" means literally "for the suit." In practice, it means a representative, either lay (guardian) or lawyer (attorney) appointed for the limited purposes of a particular lawsuit.
[10] Section 39.507(1)(a) and (b), F.S.
[11] Section 39.521(1), F.S.
[12] Section 39.521(1)(a), F.S.
[13] Section 39.521(1)(d), F.S.
[14] Section 39.621(1), F.S.
[15] Section 39.013(1), F.S.
[16] Section 744, conference report on SB 1500 (2013 Reg. Session)

Baker Act.[17] Unlike parents, children have been found to have no constitutional right to representation by counsel in dependency court.[18]

In general, the federal and state approach to safeguarding the legal needs of children in the dependency system relies upon the appointment of guardians ad litem or attorneys ad litem. The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to document in their case plans provisions for appointing guardian ad litem to represent the child's best interest in every case of child abuse or neglect which results in a judicial proceeding.[19] The funds of the Florida guardian ad litem program support both lay volunteers who assist children in dependency proceedings and attorneys ad litem. The guardian ad litem program has succeeded in recruiting attorneys who wish to satisfy their pro bono expectations by representing children with various legal needs in dependency court.[20] When there are insufficient pro bono lawyers available and there are sufficient resources to do so, the guardian ad litem program may contract with legal aid, other programs, or private attorneys for the provision of these services.[21]

Florida law requires the appointment of a guardian ad litem for every child who is the subject of a dependency proceeding.[22] While the guardian ad litem program has requested funds to allow it to meet this mandate, the guardian ad litem indicates they have not been fully funded. As of November 2013, there were 29,285 dependent children under court supervision, of whom 22,281 (76 percent) had been appointed a guardian ad litem.[23] The guardian ad litem program also funds the current attorney ad litem program. The guardian ad litem attorney is required by program standards to request the appointment of an attorney ad litem in any case where doing so would further the best interests of the child. In addition, the court on its own motion or upon motion of any party, including the child, can appoint an attorney ad litem at any point in the dependency process.[24] Common reasons for seeking appointment of an attorney ad litem in dependency court include cases in which a child needs legal guardianship or where special expertise is needed in areas such as immigration law, disability law, or administrative forums. No statewide tracking mechanism exists for the appointment of attorneys ad litem for dependent children, because attorneys are appointed at the court circuit level. The budget for the guardian ad litem program in Fiscal Year 2012-2013 was $34.1 million dollars.[25] Last year, the guardian ad litem program spent approximately $360,000 in contracts for attorney ad litem services.[26] Each attorney ad litem is typically paid $500-$1,000 annually per child per year.[27]

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[17] Section 394.467(4), F.S. requires the appointment of the Office of the Public Defender to represent any person for whom involuntary placement is sought pursuant to ch. 394, known as the Baker Act (s. 394.451, F.S.)
[18] *In the Interest of D.B.*, 385 So. 2d. 83, 90-91 (Fla. 1980), *In the Interest of C.T.*, 503 So .2d 972, 973 (Fla. 4th DCA 1987).
[19] 42 U.S.C. ss. 5101 *et seq.*
[20] The Florida Bar has an expectation that its members perform *pro bono* services. This term literally means "for good," and is applied to services performed without compensation by lawyers.
[21] Office of the Florida Guardian ad Litem, email, (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[22] Section 39.402(8)(c)1, s. 39.807(2), s. 39.822(1), F.S.
[23] Florida Guardian ad Litem, November 2013 Representation Report (on file with the Senate Appropriations Committee).
[24] Fla. R. Juv. P. 8.217(a).
[25] Office of the Florida Guardian ad Litem, *supra* note 20.
[26] Proviso language in the budget last year included funds appropriated for contracts with Attorneys ad Litem, to be selected and contracted with by the GAL.
[27] Office of Florida Guardian ad Litem, *supra* note 20.

In addition to the services of the attorneys ad litem through the guardian ad litem program, other options exist for legal services for children. The Florida Bar Foundation provides grants to legal service providers, several law schools have clinics which serve children, and several Children's Councils[28] fund lawyers for children. Notable among efforts to provide legal services is the Foster Children's Project in Palm Beach County. This project, administered by the Legal Aid Society of Palm Beach County and funded by the Children's Services Council of Palm Beach County and the guardian ad litem program, provides every child in the foster care system between birth and 12 years of age, and their siblings, with an attorney to represent them in all court matters and to advocate for them to achieve permanency within 12 months. The project has recently been authorized to expand its representation to children zero to five years of age in relative placements.

The DCF estimates the number of children who would qualify for the appointment of attorneys under the provisions of this bill is 1,594.[29]

Dependent Children in Nursing Homes

The state is currently party to a lawsuit related to the placement of medically complex children in more restrictive settings such as nursing homes. The United States Department of Justice joined the lawsuit which alleges the state violated the Americans with Disabilities Act (ADA).[30] The Agency for Health Care Administration (AHCA) has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of and are provided in home health services. In addition, the DCF and the Agency for Persons (APD) with Disabilities have worked with medically complex children and their families to ensure the least restrictive placement.

The DCF reports that currently 11 dependent children reside in nursing homes.[31] According to the guardian ad litem program, counsel currently represent all of these children.

Dependent Children and Psychotropic Drugs

Florida law requires the DCF to obtain consent from parents or a court order before administering psychotropic drugs to a child, barring an emergency.[32] The statute directs, unless parental rights have been terminated, parents should be involved in decision-making regarding administration of these drugs. By rule, when a child of sufficient age, understanding, and

[28] Florida Children's Councils, or Children's Services Councils, are locally established special taxing districts designed to provide services to children and families. Chapter 125, F.S., governs their creation and operation. The first Council was approved in 1946 in Pinellas County. There are currently Councils (with slight variances in names) in Broward, Duval, Hillsborough, Martin, Miami-Dade, Palm Beach, and St. Lucie counties. http://flchildrenscouncil.org/about-the-council/overview/ and http://flchildrenscouncil.org/about-cscs/member-cscs/ (last visited March 27, 2014).
[29] This number does not include those children with an unknown disability, children in in-home placements, children in extended foster care, or children being considered for placement in a residential treatment center.
[30] *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.
[31] Department of Children and Families, Informal communication (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs.)
[32] Section 39.407(3)(a)1., F.S.

maturity refuses psychotropic medication, the dependency case manager or child protective investigator must request Children's Legal Services to request an attorney for the child.[33]

Dependent Children and Residential Treatment Facilities

No information is available about the number of children being considered for placement in a residential treatment facility. Placement of a dependent child in a residential treatment facility is governed by the provisions of s. 39.407(6), F.S. This section provides placement must be the least restrictive alternative for the child and requires an immediate appointment of a guardian ad litem for the child if a guardian ad litem is not already provided. In addition, the Florida Rules of Juvenile Procedure requires if a child does not agree with placement in a residential treatment facility, the court appoints an attorney for the child, if one has not already been appointed.[34]

Developmental Disabilities

A developmental disability is defined as a disorder or syndrome which manifests before the age of 18 and is due to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, if the disability constitutes a substantial handicap reasonably expected to be permanent.[35]

Human Trafficking

The act of human trafficking is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting the person.[36]

III. Effect of Proposed Changes:

The bill requires the court to appoint an attorney for any dependent child who has a qualifying special need. Neither Florida law, nor the courts, currently guarantee legal counsel for dependent children having special needs.

This bill applies to dependent children having special needs who:

- Already live in, or are being considered for placement in a skilled nursing facility;
- Are prescribed a psychotropic medication but do not assent to take it;
- Have a developmental disability as defined in s. 393.063, F.S.;
- Already live in, or are being considered for placement in a residential treatment center; or
- Are victims of human trafficking.

The bill requires the court to ask the statewide guardian ad litem office for a recommendation for an attorney willing to work without additional compensation, or pro bono, prior to the court appointing an attorney on a compensated basis. The pro bono attorney must be available for services within 15 days after the court's request. If, however, the statewide guardian ad litem

[33] Rule 65C-35.005(3)(b), F.A.C.
[34] Fla. R. Juv. P. 8.350(6).
[35] Section 393.063(9), F.S.
[36] Section 787.06(2)(d), F.S.

does not make a recommendation within 15 days after the court's request, the court may appoint a compensated attorney. Any appointment by the court must be in writing. This provision prioritizes the use of pro bono attorneys or legal aid societies over other attorneys.

The bill directs the attorney representing the child to provide the complete range of legal services from removal from the home or initial appointment through all appellate proceedings. With court permission, the attorney is authorized to arrange for supplemental or separate counsel to handle appellate matters.

The bill requires, except for attorneys working pro bono or without additional compensation, adequate compensation be provided to attorneys appointed to represent dependent children with disabilities along with funding for expert witnesses, depositions, and other costs of litigation. Payment of attorneys is subject to appropriation and to review by the Justice Administrative Commission (JAC) for reasonableness. Fees are capped at $1,000 per child per year. The bill requires the JAC to contract with all attorneys appointed by the court. Therefore, all payments and distributions of legal fees will go through the JAC.

The bill requires the Department of Children and Families (DCF) to develop procedures for use in identifying a dependent child with qualifying special needs. The DCF is authorized to adopt rules for this purpose.

The bill preserves the power of the court to appoint an attorney for any dependent child under ch. 39, F.S.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 972 provides that the cost to the state for attorneys appointed to represent a dependent child will be limited to the amount specifically appropriated for this purpose and attorney fees may not exceed $1,000 per child per year. However, the state's experience in paying for court-appointed counsel in criminal cases, dependency cases, and for capital collateral counsel has shown costs are difficult to control. While the Legislature may set rates to pay private attorneys and even require private attorneys to sign contracts agreeing to certain payment levels, the attorney can argue to the court their individual case warrants higher reimbursement. Courts have in some instances awarded higher fees. The Florida Supreme Court has held attorneys' fees and costs for court appointed counsel can exceed statutory limits in certain circumstances.[37]

The number of children in the dependency system that will qualify for appointed attorneys under the bill is unknown. However, based on the Department of Children and Families' estimates, approximately 1,594 children would be entitled to an attorney at a cost of $1.58 million for attorney fees. The fiscal impact of the bill may be reduced if pro bono attorneys are willing to represent some of these children; however, the number of cases that would be handled by pro bono attorneys is unknown. The DCF may incur costs in developing procedures to identify qualifying dependent children and in adopting rules.

The Office of State Courts Administrator (OSCA) indicates that fiscal impact cannot accurately be determined as insufficient data is available to quantify the increase in judicial workload. Still the OSCA expects an increase in workload from:

- The entry of orders of appointment or discharge;
- Longer hearings due to participation of attorneys;
- Additional motions and other filings from attorneys; and
- Hearings to determine a child's eligibility for counsel.[38]

VI. Technical Deficiencies:

None.

[37] *Maas v. Olive*, 992 So. 2d 196 (Fla. 2008) (holding that the statutory cap on attorney fees for court-appointed attorneys in postconviction relief proceedings was unconstitutional even though defendants have no constitutional right to such representation). *Makemson v. Martin County*, 491 So. 2d 1109, 1112 (Fla. 1986). Although this case only addressed the adequate representation of a criminal defendant based on the constitutional sixth amendment right to counsel; *Bd. of County Comm'rs of Hillsborough County v. Scruggs,* 545 So. 2d 910, 912 (Fla. 2d DCA 1989). This case applied the holding of expanding *Makemson* to attorney representation of parents in civil dependency and parental termination hearings: "Although the right to counsel in criminal cases emanates from the sixth amendment, and in civil dependency and termination of parental rights proceedings, from due process considerations, counsel is required in each case because fundamental constitutional interests are at stake. *Id*.

[38] Office of State Courts Administrator, *2014 Judicial Impact Statement, CS/SB 972* (March 28, 2014); on file with the Senate Judiciary Committee.

VII. Related Issues:

The bill is unclear as to whether organizations who agree to represent a child without additional compensation can receive funds for expert witnesses, and other litigation costs.

VIII. Statutes Affected:

This bill creates section 39.01305 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The committee substitute limits attorney fees to $1,000 per child per year.

CS/CS by Judiciary on April 1, 2014:
The committee substitute:
- Narrows the class of qualifying dependent children who are entitled to an attorney;
- Requires the court to prioritize the appointment of pro bono attorneys or other attorneys who will serve without additional compensation;
- Requires the court to appoint an attorney on a time-limited basis of 15 days;
- Provides that the Justice Administrative Commission will contract with all attorneys appointed by the court; and
- Requires the Department of Children and Families to develop procedures to use in identifying dependent children who qualify for legal services under the bill.

CS by Children, Families, and Elder Affairs on March 18, 2014:
Recognizes the contributions of organizations and individuals already providing legal representation to children in the dependency system and expresses the legislative intent that the efforts of these organizations and individuals not be supplanted by the provisions of this bill:
- Replaces legislative intent regarding the appointment of attorneys for children with a directive that such attorneys be appointed for identified groups of children;
- Revises the description of the groups of dependent children for whom attorneys must be appointed;
- Provides that attorney fees are subject to review by the Justice Administration Commission for reasonableness;
- Authorizes the Justice Administration Commission to contract with attorneys selected by the GAL program; and
- Limits attorney fees to $3,000 per child per year.

B. Amendments:

None.

LEGISLATIVE ACTION

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

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete line 102
and insert:
may not exceed $1,000 per child per year in addition to the sum of $110,000, which shall be provided to the Justice Administrative Commission for administrative costs.

388572

LEGISLATIVE ACTION

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

The Committee on Appropriations (Galvano) recommended the following:

Senate Substitute for Amendment (670178)

Delete line 102

and insert:

may not exceed $1,000 per child per year.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Galvano and Bradley

590-03522-14 2014972c2

A bill to be entitled

An act relating to attorneys for dependent children with special needs; providing legislative findings and intent; creating s. 39.01305, F.S.; requiring appointment of an attorney to represent a dependent child who meets one or more specified criteria; requiring that, if one is available, an attorney who is willing to represent a child without additional compensation be appointed; requiring that the appointment be in writing; requiring that the appointment continue in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed; requiring that an attorney not acting in a pro bono capacity be adequately compensated for his or her services and have access to funding for certain costs; providing for financial oversight by the Justice Administrative Commission; providing a limit on attorney fees; requiring the Department of Children and Families to develop procedures to identify dependent children who qualify for an attorney; authorizing the department to adopt rules; providing applicability; providing an effective date.

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

Section 1. (1)(a) The Legislature finds that:

1. All children in proceedings under chapter 39, Florida Statutes, have important interests at stake, such as health, safety, and well-being and the need to obtain permanency.

2. A dependent child who has certain special needs has a particular need for an attorney to represent the dependent child in proceedings under chapter 39, Florida Statutes, as well as in fair hearings and appellate proceedings, so that the attorney may address the child's medical and related needs and the services and supports necessary for the child to live successfully in the community.

(b) The Legislature recognizes the existence of organizations that provide attorney representation to children in certain jurisdictions throughout the state. Further, the statewide guardian ad litem program provides best interest representation for dependent children in every jurisdiction in accordance with state and federal law. The Legislature, therefore, does not intend that funding provided for representation under this act supplant proven and existing organizations representing children. Instead, the Legislature intends that funding provided for representation under this act be an additional resource for the representation of more children in these jurisdictions, to the extent necessary to meet the requirements of chapter 39, Florida Statutes, with the cooperation of existing local organizations or through the expansion of those organizations. The Legislature encourages the expansion of pro bono representation for children. This act is not intended to limit the ability of a pro bono attorney to appear on behalf of a child.

Section 2. Section 39.01305, Florida Statutes, is created to read:

39.01305 Appointment of an attorney for a dependent child

with certain special needs.—

(1) An attorney shall be appointed for a dependent child who:

(a) Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;

(b) Is prescribed a psychotropic medication but declines to assent to the psychotropic medication;

(c) Has a diagnosis of developmental disability as defined in s. 393.063;

(d) Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or

(e) Is a victim of human trafficking as defined in s. 787.06(2)(d).

(2)(a) Before a court may appoint an attorney who may be compensated pursuant to this section, the court must request a recommendation from the statewide guardian ad litem office for an attorney who is willing to represent a child without additional compensation. If such an attorney is available within 15 days after the court's request, the court must appoint that attorney. However, the court may appoint a compensated attorney within the 15-day period if the statewide guardian ad litem office informs the court that it will not be able to recommend an attorney in that time period.

(b) After an attorney is appointed, the appointment continues in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed under this section to represent the child shall provide the complete range of legal services, from

the removal from home or from the initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to represent the child in appellate proceedings. A court order appointing an attorney under this section must be in writing.

(3) Except if the attorney has agreed to provide pro bono services, an appointed attorney or organization must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. Payment to an attorney is subject to appropriations and subject to review by the Justice Administrative Commission for reasonableness. The Justice Administrative Commission shall contract with attorneys appointed by the court. Attorney fees may not exceed $3,000 per child per year.

(4) The department shall develop procedures to identify a dependent child who has a special need specified under subsection (1) and to request that a court appoint an attorney for the child. The department may adopt rules to administer this section.

(5) This section does not limit the authority of the court to appoint an attorney for a dependent child in a proceeding under this chapter.

(6) Implementation of this section is subject to appropriations expressly made for that purpose.

Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

April 2, 2014

Senator Joe Negron
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron:

I respectfully request that CS/CS/SB 972, Attorneys for Dependent Children with Disabilities, be scheduled for a hearing in the Committee on Appropriations at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Cindy Kynoch
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2019
Meeting Date

Topic _____ Bill Number 972 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Attorney for Adult children w/special needs Bill Number 972 *(if applicable)*

Name ALAN ABRAMOWITZ Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 600 Calhoun Street Phone 850-241-3252
Street

Tallahassee FL 32301 E-mail ALAN.ABRAMOWITZ@gal.fl.gov
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing GAL

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-24-14
Meeting Date

Topic Attorneys for Dependent Children with Special Needs
Bill Number 972 *(if applicable)*

Name Christina Spudeas (Spoo-DAY-us)
Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B
Street
Coral Springs, FL 33071
City *State* *Zip*

Phone 954-326-8923

E-mail christina.spudeas@floridaschildrenfi

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida's Children First

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-24-2014
Meeting Date

Topic Special Needs - Children Attorney

Bill Number SB 972 *(if applicable)*

Name Steve Metz

Amendment Barcode *(if applicable)*

Job Title

Address 215 S Monroe St Suite 505
Street

Tallahassee, Fla. 32301
City *State* *Zip*

Phone

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla. Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1044
INTRODUCER:	Appropriations Committee; Agriculture Committee; Communications, Energy, and Public Utilities Committee; and Senator Simpson
SUBJECT:	Building Construction Policies
DATE:	April 25, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Weidenbenner	Becker	AG	**Fav/CS**
3.	Blizzard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1044 revises the statutes for the energy-related duties, powers, and functions of the Department of Agriculture and Consumer Services (DACS or department). Specifically the bill:

- Authorizes the department to promote all forms of renewable energy, not simply solar.
- Authorizes the Florida Energy Systems Consortium to participate with the department and other entities in aiding and promoting the commercialization of renewable energy.
- Authorizes the Commissioner of Agriculture to appoint a member of the Southern States Energy Board (SSEB).
- Repeals obsolete statutes creating the rebates for solar energy systems and energy efficient appliances, together with making conforming changes.
- Authorizes the department to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public and
- Adds a representative of the Office of Energy within the department to the Florida Building Commission.

In addition, the bill:

- Gives local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.
- Reduces the proof of experience required to obtain a license as a water well contractor.

- Provides that proof of worker's compensation may be presented electronically when an employer applies for a building permit, and that such proof may be submitted and retained electronically.
- Authorizes the Department of Health (DOH) to grant variances from the Florida Building Code relating to public swimming pools and public bathing places and requires building officials to recognize and enforce these variance orders.
- Requires an application to DOH for an operating permit for a public swimming pool before an application may be filed for a building permit.
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules.
- Prohibits an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code, except when the equipment is being replaced or moved during reroofing.
- Provides that make-up air is not required for range hood exhaust systems meeting specified criteria, in a single family dwelling.
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations.
- Allows site plans or building permits to be maintained at the worksite in the original form or in the form of an electronic copy.
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program.
- Provides an additional fire safety alarm option for homeowners making renovations.
- Revises the requirements for a building energy-efficiency rating system.
- Exempts certain tents from the Florida Fire Prevention Code.
- Removes the requirement that a member of the Fire Code Interpretation Committee notify the committee that he or she is unable to respond to a request for a nonbinding interpretation of the Florida Fire Prevention Code, before an alternate can respond.
- Allows an owner of improved real property and the insurer of that property to explicitly agree in writing to make payment on any claim to a third party instead of the insured named in the policy.
- Provides an effective date of July 1, 2014, unless otherwise provided.

The bill does not appear to have a fiscal impact on state revenues or expenditures.

II. Present Situation:

Office of Energy

The Office of Energy is the state entity primarily responsible for non-regulatory energy matters, including coordinating with federal entities on energy issues, administering federal energy programs delegated to the state, and administering state energy rebate programs. The Office of Energy, currently located in the DACS, has been located in the Executive Office of the Governor, the Department of Community Affairs, and the Department of Environmental Protection.

Section 377.6015, F.S., provides the department's primary powers and duties relating to energy resources, including:

- Administering the Florida Renewable Energy and Energy-Efficient Technologies Grants Program;
- Developing policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
- Administering the Florida Green Government Grants Act and setting annual priorities for grants;
- Administering specified information gathering and reporting functions;
- Administering the provisions of the Florida Energy and Climate Protection Act;
- Advocating for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions;
- Participating in the Public Service Commission's Florida Energy Efficiency and Conservation Act proceedings to adopt goals; and
- Adopting rules in order to implement these powers and duties.

Section 377.703, F.S., sets forth the following additional functions of the DACS relating to energy:

- Submission of an annual report to the Governor and Legislature reflecting its activities, which must include recommendations for energy conservation programs for the state;
- Promoting the development and use of renewable energy resources by:
  - Establishing goals and strategies for increasing the use of solar energy in this state;
  - Aiding and promoting the commercialization of solar energy technology, in cooperation with the Florida Solar Energy Center and other agencies;
  - Identifying barriers to greater use of solar energy systems in this state; and
  - In cooperation with specified entities, investigating opportunities for solar electric vehicles and other solar energy manufacturing, distribution, installation, and financing efforts which will enhance this state's position as the leader in solar energy research, development, and use; and
- Promoting energy conservation in all energy use sectors throughout the state.

Southern States Energy Compact

Section 377.711, F.S., establishes Florida as a member of the Southern States Energy Compact. The compact is performed by the Southern States Energy Board (SSEB or board). The SSEB is a non-profit interstate compact organization created by state law in 1960 and consented to by Congress[1] with a broad mandate to contribute to the economic and community well-being of the southern region.[2] Its mission is to enhance economic development and the quality of life through innovations in energy and environmental policies, programs, and technologies. The board's membership includes sixteen southern states and two territories: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia. Each jurisdiction is represented by the Governor and a legislator from the House and Senate. A

[1] Public Laws 87-563 and 92-440.
[2] http://www.sseb.org/about/ last accessed 2/20/2014.

Governor serves as the chair and legislators serve as vice-chair and treasurer. Ex-officio non-voting board members include a federal representative appointed by the President of the United States, the Southern Legislative Conference Energy and Environment Committee Chair, and the SSEB's executive director, who serves as secretary.

The SSEB pursues its mission through the creation of programs in the fields of energy and environmental policy research, development and implementation, science and technology exploration, and related areas of concern. The SSEB serves its members directly by providing assistance designed to develop effective energy and environmental policies and programs and represents its members before governmental agencies at all levels. The board's long-term goals are to:

- Perform essential services that provide direct scientific and technical assistance to state governments;
- Develop, promote, and recommend policies and programs on energy, environment, and economic development that encourage sustainable development;
- Provide technical assistance to executive and legislative policy-makers and the private sector in order to achieve synthesis of energy, environment, and economic issues that ensure energy security and supply;
- Facilitate the implementation of energy and environmental policies between federal, state, and local governments and the private sector;
- Sustain business development throughout the region by eliminating barriers to the use of efficient energy and environmental technologies; and
- Support improved energy efficient technologies that pollute less and contribute to a clean global environment while protecting indigenous natural resources for future generations.

Core funding for the board comes from the appropriations of its eighteen member jurisdictions. Each member's share of support is determined by a formula written into the original compact. The SSEB also is authorized to accept funds from any state, federal agency, interstate agency, institution, person, firm, or corporation provided those funds are used for the board's purposes and functions. In addition, the SSEB maintains an associate members program comprised of industry partners who provide an annual contribution to the board.

Section 377.712, F.S., provides for Florida's participation on the SSEB, including requiring the Governor, President of the Senate, and Speaker of the House of Representatives to each appoint one member to the SSEB.[3] The section also authorizes departments, agencies, and officers of the state and its subdivisions to cooperate with the SSEB if the activities have been approved by either the Governor or the Florida Department of Health.

Rebate Programs

Section 377.802, F.S., provides the purpose of the Florida Energy and Climate Protection Act. Among these purposes is providing incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

[3] Currently the Florida members are Governor Rick Scott, Senator Anitere Flores, and Representative Jose Felix Diaz.

Section 377.806, F.S., creates the Solar Energy System Incentives Program. The program was created in 2006 and was administered by the Florida Energy Office within the Florida Energy and Climate Commission (FECC). The purpose of the program was to provide financial incentives (rebates on a portion of the purchase price) for the purchase and installation of solar energy systems that meet specified requirements. Rebates were available for both solar photovoltaic systems that produce electricity and solar thermal systems that produce heat. The amounts of the rebates were as follows:

- For a photovoltaic system, the rebate amount was $4 per watt based on the total wattage rating of the system, with the maximum amount per system installation of:
  - $20,000 for a residence and
  - $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal system:
  - $500 for a residence and
  - $15 per 1,000 Btu up to a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.
- For a solar thermal pool heater, the rebate amount was $100 per installation.

The rebate was available only for the purchase and installation between July 1, 2006, and June 30, 2010, for new solar energy systems of two kilowatts or larger for a solar photovoltaic system. A photovoltaic system is a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater. Application for a rebate had to be made within 120 days after the purchase of the solar energy equipment.

The FECC was to determine and publish the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued was subject to the appropriations in any fiscal year for this program.

The Legislature provided annual funding for the program, as follows:

- FY 2006-07 $2.5 million in general revenue
- FY 2007-08 $3.5 million in general revenue
- FY 2008-09 $5.0 million in general revenue
- FY 2009-10 $14.4 million in federal American Recovery and Reinvestment Act (ARRA) 2009 funds

The program was more popular than anticipated. Additionally, the FECC did not announce that funds for the program had been depleted until several months after the fact. These factors contributed to a backlog of over 12,000 applications and approximately $49 million of rebate applications had accumulated as of October 2010. The rebate applications dated as far back as June 2009.[4]

[4] See http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf. (last visited Mar. 27, 2014).

Section 377.807, F.S., authorized the FECC to develop and administer a consumer rebate program for residential energy-efficient appliances consistent with federal law.[5] The Office of Energy applied for federal funds for this rebate program and received a U.S. Department of Energy (USDOE) ARRA Stimulus Grant of $17,585,000 to be used exclusively for ENERGY STAR appliance rebate programs. The rebate program consisted of two phases designed to focus on replacing appliances that provided savings in energy and water. In phase one, customers received a rebate for 20 percent of the value of their appliance. In addition, a bonus of $75 was provided to customers to recycle old appliances. At the conclusion of phase one, $2,531,143 million remained from the original grant. The USDOE suggested the Office of Energy use these funds and State Energy Program Grant funds to create a rebate program for air conditioning appliances. Phase two focused on residential central air conditioners and heat pumps. Customers received $1,500 for a combination of replacing appliances and having a home duct test completed. [6]

Florida Energy Systems Consortium

Section 1004.648, F.S., creates the Florida Energy Systems Consortium (FESC or consortium) to promote collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state. The FESC is to focus on the research and development of innovative energy systems that will lead to alternative energy strategies, improved energy efficiencies, and expanded economic development for the state.

The FESC consists of all of the state universities and is administered by a director appointed by the president of the University of Florida. The director reports to the DACS. The consortium has an oversight board consisting of the vice president for research or other appropriate representative appointed by the university president of each member of the consortium. The oversight board is responsible for the technical performance and financial management of the FESC.

The goal of the FESC is to become a world leader in energy research, education, technology, and energy systems analysis through collaborative research and development across the State University System and the industry. In so doing, the FESC is to:

- Coordinate and initiate increased collaborative interdisciplinary energy research among the universities and the energy industry;
- Assist in the creation and development of a Florida-based energy technology industry through efforts that will expedite commercialization of innovative energy technologies by taking advantage of the energy expertise within the state university system, high-technology incubators, industrial parks, and industry-driven research centers;
- Provide a state resource for objective energy systems analysis;
- Develop education and outreach programs to prepare a qualified energy workforce and informed public; and

[5] Chapter 2009-36, Laws of Florida.
[6] http://freshfromflorida.s3.amazonaws.com/Office_of_Energy_Annual_Report_2011.pdf, pages 19-20, last accessed 2/21/1014.

- Solicit and leverage state, federal, and private funds for the purpose of conducting education, research, and development in the area of sustainable energy.

The statute creates a steering committee that is responsible for ensuring the success of the consortium's mission. The steering committee consists of the university representatives included in the Centers of Excellence proposals for the FESC and the Center of Excellence in Ocean Energy Technology-Phase II; a university representative appointed by the president of Florida International University; and a representative of the DACS.

The FESC must, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DACS regarding its activities, including, but not limited to, education and research related to, and the development and deployment of, alternative energy technologies.

Florida Building Commission

Section 553.74, F.S., creates the Florida Building Commission (commission), which develops the Florida Building Code, including the Energy Efficiency Code for Building Construction. The commission approves products for statewide acceptance and administers the Building Code Training Program. The commission is composed of 26 members, appointed by the Governor subject to confirmation by the Senate. The membership must be composed of:

- One architect registered to practice in this state and actively engaged in the profession;
- One structural engineer registered to practice in this state and actively engaged in the profession;
- One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession;
- One electrical contractor certified to do business in this state and actively engaged in the profession;
- One member from fire protection engineering or technology who is actively engaged in the profession;
- One general contractor certified to do business in this state and actively engaged in the profession;
- One plumbing contractor licensed to do business in this state and actively engaged in the profession;
- One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession;
- One residential contractor licensed to do business in this state and actively engaged in the profession;
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official;
- One member who represents the Department of Financial Services;
- One member who is a county codes enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state;
- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry;

- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry;
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- One member who is a representative of the insurance industry;
- One member who is a representative of public education;
- One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession;
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED);
- One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state; and
- One member who shall be the chair.

The commission, which is housed within the Department of Business and Professional Regulation, is a 26-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance and administers the Building Code Training Program.

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. Pursuant to s. 162.12(1), F.S., notices may be provided by:

- Certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs s. 162.12(2)(b)1. and 2., F.S;[7]
- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving the notice at the violator's residence with any person residing there above the age of 15; or,
- For commercial premises, leaving the notice with the manager or other person in charge.[8]

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.[9]

[7] Relating to publication of notices and the physical posting of notices, respectively.
[8] *See* ss. 162.12(1)(b)-(d), F.S.
[9] *See* s.162.12(2), F.S.

Pool Construction and Operation in Florida

The DOH estimates that there are approximately 37,000 public pools in Florida.[10] A "public swimming pool" or "public pool" is defined as:

> A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.[11]

A "public bathing place" is defined as:

> A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.[12]

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.[13] In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the DOH.[14]

[10] E-mail from DOH staff (March 27, 2014).
[11] Section 514.011(2), F.S.
[12] Section 514.011(4), F.S.
[13] Chapter 2012-184, Laws of Fla.
[14] Section 514.031(1), F.S.

If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the DOH will issue a permit. However, if the DOH determines that the pool is not in compliance with state laws and departmental rules, the DOH will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.[15] The operating permit must be renewed annually and posted in a conspicuous place.[16]

Manufactured Buildings and Building Modules per the Florida Building Code

Section 553.72, F.S., provides that the Florida Building Code (code) is "a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state," and its enforcement "will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer." The Florida Building Commission adopts requirements, within the Florida Building Code, for construction or modification of manufactured buildings and building modules, to address:[17]

- Submission to and approval by the department of manufacturers' drawings and specifications, including any amendments.
- Submission to and approval by the department of manufacturers' internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

"Manufactured building" or "modular building" means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured for installation or erection as a finished building or as part of a finished building, including, but not limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.[18]

"Module" means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.[19]

Florida Building Code Interpretation

Section 553.775, F.S., authorizes the Florida Building Code to be interpreted by building officials, local enforcement agencies, and the commission, and provides specific procedures to be used when interpreting the code.

[15] *Id.*
[16] Section 514.031(4), F.S.
[17] Section 553.37(1), F.S.
[18] Section 553.36(13), F.S.
[19] Section 553.36(15), F.S.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements described in part I of ch. 553, F.S.

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

Florida Building Code Compliance and Mitigation Program

The department administers the Florida Building Code Compliance and Mitigation Program, which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.[20] The program is geared toward persons *licensed* in the design and construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with department.[21]

Building Energy-Efficiency Rating System

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act[22] in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.[23] The current statutory definition of such a rating system specifically relies upon identification by "the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Center."[24] Information about a building's energy-efficiency must be provided to a prospective purchaser of real property, if available. Prior to contracting for construction, renovation, or acquisition of a public building, the building must be rated pursuant to the system provided for in s. 553.995, F.S. Public bodies proposing to contract must consider energy-efficiency ratings when comparing contract alternatives.[25]

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., to give local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of codes and ordinances.

[20] Section 553.841(2), F.S.
[21] Section 553.841(3), F.S.
[22] Chapter 93-249, s.12, Laws of Fla.
[23] Section 553.991, F.S.
[24] Section 553.993(3), F.S.
[25] Section 553.997(1), F.S.

Section 2 amends s. 373.323, F.S., to reduce the proof of experience required to obtain a license as a water-well contractor.

Section 3 amends s. 377.6015, F.S., to remove language stating that the Department of Agriculture and Consumer Services (DACS) is to represent Florida in the Southern Energy Compact.

Section 4 amends s. 377.703, F.S., regarding the additional duties of the DACS relating to energy by:

- Adding a requirement that the department's annual report to the Governor and the Legislature contain recommendations on energy efficiency as well as the current recommendations on energy conservation;
- Changing the requirements relating to the department's duties to promote solar energy to the promotion of renewable energy; and
- Adding the Florida Energy Systems Consortium to the list of entities the DACS is to cooperate with, in aiding and promoting the commercialization of renewable energy.

Section 5 amends s. 377.712, F.S., to authorize the Commissioner of Agriculture to appoint a member of the Southern States Energy Board, increasing the Florida membership to a total of four. Current law authorizes departments, agencies, and officers of this state, and its subdivisions to cooperate with the board in the furtherance of any of its activities pursuant to the compact, provided such proposed activities have been made known to and approved by either the Governor or the Department of Health. The bill changes the approval portion of this provision to approval by either the Governor or the Governor's appointee to the Board.

Section 6 amends s. 377.801, F.S., to change the designated sections of the statute that may be cited as the "Florida Energy and Climate Protection Act," conforming to the repeal of some sections previously included as part of that act.

Section 7 amends s. 377.802, F.S., to delete language that refers to the solar energy and energy-efficient appliance rebate programs as the existing statutes creating these rebates are repealed in section 9 of the bill.

Section 8 amends s. 377.803, F.S., to delete definitions contained in the Florida Energy and Climate Protection Act for the terms: "solar energy system," "solar photovoltaic system," and "solar thermal system."

Section 9 repeals sections 377.806 and 377.807, F. S., creating the solar energy and energy-efficient appliance rebate programs. These programs are no longer operational.

Section 10 creates s. 377.815, F.S., to authorize the DACS to post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available to the public.

Section 11 amends s. 440.103, F.S., to allow proof that compensation has been secured for an employer's employees, which is required as a condition of applying for a building permit, to be

shown electronically or physically. It also cross references s. 553.79(19), F.S., and states that site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy.

Section 12 amends s. 514.0115, F.S., to allow the department, pursuant to procedures adopted in department rule, to grant variances from the provisions of the Florida Building Code relating to public swimming pools and bathing places when the owner establishes that compliance would be a hardship.

Section 13 amends s. 514.03, F.S., to require those desiring to construct, develop, or modify a public swimming pool to apply to the DOH for an operating permit before applying for a building permit. This section takes effect October 1, 2014.

Section 14 amends s. 514.031, F.S., to create additional requirements for an application for an operating permit for a public swimming pool. This section takes effect October 1, 2014.

Section 15 amends s. 553.37, F.S., to add inspection criteria that must be adopted by the Florida Building Commission within the Florida Building Code. The criteria require the approved inspection agency to do the following:

- Observe the first building built, or the first unit assembled with components, and all its subsystems, after certification of the manufacturer;
- Continue observation of the manufacturing process until the agency determines that the manufacturer's quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements;
- Thereafter, with respect to manufactured buildings, inspect each module produced at least once during the manufacturing process and to inspect at least 75 percent of the subsystems of each module; and
- Inspect at least 75 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

Section 16 amends s. 553.721, F.S., to delete obsolete language.

Section 17 amends s. 553.73, F.S., to prohibit an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof comply with the requirements of the Florida Building Code relating to roof-mounted mechanical units except when the equipment is being replaced or is being removed during reroofing. The bill also provides that, in a single-family dwelling, make-up air is not required for range hood exhaust systems capable of exhausting either 400 cubic feet per minute or less or more than 400 cubic feet per minute but no more than 800 cubic feet per minute, if there are no gravity vent appliances within the conditioned living space of the structure.

Section 18 amends s. 553.74, F.S., to add one member to the Florida Building Commission who is a representative of the DACS' Office of Energy. The bill specifies the additional member be appointed by the Governor, and encourages the Commissioner of Agriculture to recommend a list of candidates for consideration.

Section 19 amends s. 553.77, F.S., to require building officials to recognize and enforce variance orders issued by Department of Health (DOH) relating to public swimming pools.

Section 20 amends 553.775, F.S., to authorize building officials, local enforcement agencies, and the commission to interpret the accessibility code and to remove language restricting declaratory statements to Florida-specific requirements of the accessibility code.

Section 21 amends s. 553.79, F.S., to allow site plans or building permits to be maintained at the worksite in the original form or in the form of an electronic copy. The section also prohibits a local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit. A certificate of completion or occupancy may not be issued until the operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the DOH, if necessary, but may not delay the building permit application review while awaiting comment. This section takes effect October 1, 2014.

Section 22 amends s. 553.80, F.S., to make a technical change.

Section 23 amends s. 553.841, F.S., to revise education and training requirements of the Florida Building Code Compliance and Mitigation program. In addition to maintaining a thorough knowledge of the code, participants in the design and construction industry should have a thorough knowledge of:

- Code compliance and enforcement;
- Duties related to consumers;
- Project completion; and
- Compliance of design and construction to protect against consumer harm and storm damage.

The bill also contains a legislative finding that there is a need for the program to provide education and outreach concerning compliance with the Florida Fire Prevention Code, construction plan and permitting requirements, and construction liens. The bill further expands the program to include methods for design and construction compliance.

Section 24 amends s. 553.883, F.S., to provide that one-family and two-family dwellings and townhouses that are undergoing a repair may use smoke alarms with a non-removable, non-replaceable, 10-year battery, instead of hardwiring a smoke alarm into the electrical system. Effective January 15, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years. All fire alarms, smoke detectors, smoke alarms, and ancillary components that are electronically connected to a system as part of an Underwriters Laboratories listed centrally-monitored fire alarm station are exempt from these battery requirements.

Section 25 amends s. 553.993, F.S., to revise the definition of the term "building energy-efficiency rating system" to require that the system include:

- The ability to provide reliable and scientifically-based analysis of a building's energy consumption or energy features;

- The ability to compare similar building types in similar climate zones;
- Use of standard calculations, formulas, and scoring methods;
- National applicability;
- Clearly defined and researched baselines or benchmarks;
- Ratings that are performed by qualified professionals;
- A labeling and recognition program with specific criteria or levels;
- Residential program benchmarks that must be consistent with national building standards and home energy rating standards; and
- At least one level of oversight performed by a group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.

Section 26 amends s. 633.202, F.S., to exempt tents 30 feet by 30 feet or smaller from the Florida Fire Prevention Code.

Section 27 amends s. 633.212, F.S., to remove the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond, before an alternate member can respond to a request for a nonbinding interpretation.

Section 28 amends s. 713.32, F.S., to allow an owner of improved real property and the insurer of that property to explicitly agree in writing to make payment on any claim to a third party. Currently, the insurer must pay the insured named in the policy.

Section 29 provides that, except as otherwise provided, this bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, section 6 of the Florida Constitution provides that "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The title of CS/CS/CS/SB 1044 states the bill relates to "building construction policies." CS/CS/CS/SB 1044 includes items relating to both building construction and energy policy that may implicate the requirements of Article III, section 6 of the state constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/CS/SB 1044 provides that a building energy-efficient rating system require at least one level of oversight performed by an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods. This new requirement may create jobs for some professionals, but may exclude others operating under the current rating system, resulting in business and job loss.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 162.12, 373.323, 377.6015, 377.703, 377.712, 377.801, 377.802, 377.803, 553.74, 440.103, 514.0115, 514.03, 514.031, 553.37, 553.721, 553.73, 553.74, 553.77, 553.775, 553.79, 553.80, 553.841, 553.883, 553.993, 633.202, 633.212, and 713.32.

This bill creates section 377.815 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 377.806 and 377.807.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 24, 2014:
The Committee Substitute:

- Incorporates the provisions of CS/CS/SB 1106, relating to building construction, water well contractor licensing, public swimming pools, and payment of insurance proceeds on claims for damages to improved real property.

- Revises the method of appointment of a representative of the Department of Agriculture and Consumer Services to the Florida Building Commission.
- Authorizes an appointee of the Governor to approve proposed activities relating to the Southern States Energy Compact.

CS/CS by Agriculture on March 31, 2014:
A section of the CS made certain duties of the Florida Solar Energy Center permissive instead of mandatory and it removed the requirement that all solar systems manufactured or sold in Florida must be certified by the Florida Solar Energy Center. The CS/CS removes those provisions of the bill which will keep the present law "as is."

CS by Communications, Energy, and Public Utilities on March 11, 2014:
Corrects technical deficiencies identified in the pre-meeting bill analysis on the original bill and makes other technical changes.

B. Amendments:

None.

788564

LEGISLATIVE ACTION

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

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 153

and insert:

member appointed by the Governor ~~Department of~~

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

And the title is amended as follows:

Delete line 16

and insert:

788564

authorizing the member appointed by the Governor to approve proposed


810258

LEGISLATIVE ACTION

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

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 234 and 235
insert:

Section 10. Section 377.816, Florida Statutes, is created to read:

377.816 Qualified energy conservation bond allocation.—

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

(a) "Eligible issuer" means an entity that is created under or pursuant to the constitution or laws of this state and that


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is authorized by this state to issue bonds or enter into a lease-purchase agreement, or any other entity in this state authorized to issue qualified energy conservation bonds pursuant to the Internal Revenue Code.

(b) "Office" means the Office of Energy within the Department of Agriculture and Consumer Services.

(c) "Qualified energy conservation bond" means a bond described in 26 U.S.C. s. 54D(a).

(d) "Qualified project" means a project eligible to be financed pursuant to 26 U.S.C. s. 54D(f).

(2) ALLOCATION OF STATE VOLUME LIMITATION.—

(a) The office shall establish an allocation program for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D. The allocation program must provide notification of all mandatory allocations required or authorized pursuant to the Internal Revenue Code.

1. All mandatory allocations pursuant to 26 U.S.C. s. 54D(e)(2)(A) shall be allocated to eligible issuers as provided therein.

2. An eligible issuer receiving a mandatory allocation pursuant to subparagraph 1. may elect to reallocate all or any portion of its allocation back to the state pursuant to 26 U.S.C. s. 54D(e)(2)(B).

(b) The office may reallocate to eligible issuers in the state any allocation that was retained by the state from the original federal allocation or any allocation that is waived by an eligible issuer pursuant to subparagraph (a)2.

(c) Each eligible issuer receiving an allocation shall


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notify the department in writing of the amount of bonds issued and any other information relating to the bonds or the allocation at such time and in such manner as is required by the office.

(d) A bond subject to the limitations provided in 26 U.S.C. s. 54D may not be issued in this state unless issued pursuant to this section.

(3) INFORMATION AVAILABILITY.—The office shall determine the amount of qualified energy conservation bond allocations for each qualified issuer in this state under 26 U.S.C. s. 54D and shall make such information available upon request to any person or agency.

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

And the title is amended as follows:

Between lines 29 and 30

insert:

creating s. 377.816, F.S.; defining terms; requiring the Office of Energy to establish a program for allocating or reallocating a federally qualified energy conservation bond volume limitation; providing program requirements;

331712

LEGISLATIVE ACTION

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

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment

Delete lines 347 - 352
and insert:
Agriculture and Consumer Services' Office of Energy. The Commissioner of Agriculture is encouraged to recommend a list of candidates for consideration.

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LEGISLATIVE ACTION

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

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete line 361
and insert:
Section 10. Section 162.12, Florida Statutes, is amended to read:
162.12 Notices.—
(1) All notices required by this part must be provided to the alleged violator by:
(a) Certified mail, and at the option of the local


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government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.


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2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 11. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure

examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from ~~three of the following persons:~~

~~a.~~ a water well contractor and a letter from~~.~~

~~b. A water well driller.~~

~~c. A water well parts and equipment vendor.~~

~~d.~~ a water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 12. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and


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receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(19), for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 13. Subsection (5) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(5) The department may grant variances from any rule adopted under this chapter pursuant to procedures adopted by department rule. The department may also grant, pursuant to procedures adopted by department rule, variances from the provisions of the Florida Building Code specifically pertaining


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to public swimming pools and bathing places when requested by the pool owner or their representative to relieve hardship in cases involving deviations from the Florida Building Code provisions, when it is shown that the hardship was not caused intentionally by the action of the applicant, where no reasonable alternative exists, and the health and safety of the pool patrons is not at risk.

Section 14. Effective October 1, 2014, section 514.03, Florida Statutes, is amended to read:

514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—

(1) A person or public body desiring to construct, develop, or modify a public swimming pool must submit an application, containing the information required under s. 514.031(1)(a)1.-5. to the department for an operating permit before filing an application for a building permit under s. 553.79. A copy of the final inspection required under s. 514.031(1)(a)6. shall be submitted to the department upon receipt by the applicant. The application shall be deemed incomplete pursuant to s. 120.60 until such copy is submitted to the department.

(2) Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

Section 15. Effective October 1, 2014, paragraph (a) of subsection (1) of section 514.031, Florida Statutes, is amended, present paragraphs (b) and (c) of that subsection are


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redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

514.031 Permit necessary to operate public swimming pool.—

(1) It is unlawful for any person or public body to operate or continue to operate any public swimming pool without a valid permit from the department, such permit to be obtained in the following manner:

(a) Any person or public body desiring to operate any public swimming pool shall file an application for an operating ~~a~~ permit with the department, on application forms provided by the department, and shall accompany such application with:

1. A description of the structure, its appurtenances, and its operation.

2.~~1.~~ A description of the source or sources of water supply, and the amount and quality of water available and intended to be used.

3.~~2.~~ The method and manner of water purification, treatment, disinfection, and heating.

4.~~3.~~ The safety equipment and standards to be used.

5. A copy of the final inspection from the local enforcement agency as defined in s. 553.71.

6.~~4.~~ Any other pertinent information deemed necessary by the department.

(b) The applicant shall respond to a request for additional information due to an incomplete application for an operating permit pursuant to s. 120.60. Upon receipt of an application, whether complete or incomplete, as required in s. 514.03 and as set forth under this section, the department shall review and provide to the local enforcement agency and the applicant any


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comment or proposed modifications on the information received pursuant to subparagraphs 1.-5.

Section 16. Paragraph (c) of subsection (1) of section 553.37, Florida Statutes, is amended to read:

553.37 Rules; inspections; and insignia.—

(1) The Florida Building Commission shall adopt within the Florida Building Code requirements for construction or modification of manufactured buildings and building modules, to address:

(c) ~~Minimum~~ Inspection criteria, which shall require the approved inspection agency to:

1. Observe the first building built, or with regard to components, observe the first unit assembled, after certification of the manufacturer, from start to finish, inspecting all subsystems: electrical, plumbing, structural, mechanical, or thermal.

2. Continue observation of the manufacturing process until the approved inspection agency determines that the manufacturer's quality control program, in conjunction with the application of the plans approved by the approved inspection agency, will result in a building and components that meet or exceed the applicable Florida Building Code requirements.

3. Thereafter, inspect each module produced during at least one point of the manufacturing process and inspect at least 75 percent of the subsystems of each module: electrical, plumbing, structural, mechanical, or thermal.

4. With respect to components, inspect at least 75 percent of the manufactured building components and at least 20 percent of the storage sheds that are not designed for human habitation


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and that have a floor area of 720 square feet or less.

Section 17. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. ~~Beginning in the 2013-2014 fiscal year,~~ Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The funds collected from the


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surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 18. Subsection (15) of section 553.73, Florida Statutes, is amended, and subsection (18) is added to that section, to read:

553.73 Florida Building Code.—

(15) An agency or local government may not require that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except when ~~until~~ the equipment is being ~~required to be removed or~~ replaced or moved during reroofing and is not in compliance with the provisions of the Florida Building Code relating to roof-mounted mechanical units.

(18) In a single-family dwelling, make-up air is not required for range hood exhaust systems capable of exhausting:

(a) 400 cubic feet per minute or less; or

(b) More than 400 cubic feet per minute but no more than 800 cubic feet per minute if there are no gravity vent appliances within the conditioned living space of the structure.

Section 19. Subsection (7) is added to section 553.77, Florida Statutes, to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health pursuant to s.


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514.0155(5)(a), including any conditions attached to the granting of the variance.

Section 20. Section 553.775, Florida Statutes, is amended to read:

553.775 Interpretations.—

(1) It is the intent of the Legislature that the Florida Building Code and the Florida Accessibility Code for Building Construction be interpreted by building officials, local enforcement agencies, and the commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction which are just and expeditious.

(2) Local enforcement agencies, local building officials, state agencies, and the commission shall interpret provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction in a manner that is consistent with declaratory statements and interpretations entered by the commission, except that conflicts between the Florida Fire Prevention Code and the Florida Building Code shall be resolved in accordance with s. 553.73(11)(c) and (d).

(3) The following procedures may be invoked regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction:

(a) Upon written application by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue declaratory statements pursuant to s.


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120.565 relating to the enforcement or administration by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.

(b) When requested in writing by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to this part and ss. 515.25, 515.27, 515.29, and 515.37. Actions of the commission are subject to judicial review under s. 120.68.

(c) The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.

1. The commission shall coordinate with the Building Officials Association of Florida, Inc., to designate panels composed of five members to hear requests to review decisions of local building officials. The members must be licensed as building code administrators under part XII of chapter 468 and must have experience interpreting and enforcing provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction.

2. Requests to review a decision of a local building official interpreting provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction may be initiated by any substantially affected person, including an owner or builder subject to a decision of a local building

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official or an association of owners or builders having members who are subject to a decision of a local building official. In order to initiate review, the substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name and address of the county or municipality in which provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction are being interpreted.

b. The name and address of the local building official who has made the interpretation being appealed.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the local interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction.

d. A statement of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which are being interpreted by the local building official.

e. A statement of the interpretation given to provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction by the local building official and the manner in which the interpretation was rendered.

f. A statement of the interpretation that the petitioner contends should be given to the provisions of the Florida Building Code or the Florida Accessibility Code for Building


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Construction and a statement supporting the petitioner's interpretation.

g. Space for the local building official to respond in writing. The space shall, at a minimum, require the local building official to respond by providing a statement admitting or denying the statements contained in the petition and a statement of the interpretation of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the local jurisdiction or the local building official contends is correct, including the basis for the interpretation.

3. The petitioner shall submit the petition to the local building official, who shall place the date of receipt on the petition. The local building official shall respond to the petition in accordance with the form and shall return the petition along with his or her response to the petitioner within 5 days after receipt, exclusive of Saturdays, Sundays, and legal holidays. The petitioner may file the petition with the commission at any time after the local building official provides a response. If no response is provided by the local building official, the petitioner may file the petition with the commission 10 days after submission of the petition to the local building official and shall note that the local building official did not respond.

4. Upon receipt of a petition that meets the requirements of subparagraph 2., the commission shall immediately provide copies of the petition to a panel, and the commission shall publish the petition, including any response submitted by the local building official, on the Building Code Information System


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in a manner that allows interested persons to address the issues by posting comments.

5. The panel shall conduct proceedings as necessary to resolve the issues; shall give due regard to the petitions, the response, and to comments posed on the Building Code Information System; and shall issue an interpretation regarding the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction within 21 days after the filing of the petition. The panel shall render a determination based upon the Florida Building Code or the Florida Accessibility Code for Building Construction or, if the code is ambiguous, the intent of the code. The panel's interpretation shall be provided to the commission, which shall publish the interpretation on the Building Code Information System and in the Florida Administrative Register. The interpretation shall be considered an interpretation entered by the commission, and shall be binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction, unless it is superseded by a declaratory statement issued by the Florida Building Commission or by a final order entered after an appeal proceeding conducted in accordance with subparagraph 7.

6. It is the intent of the Legislature that review proceedings be completed within 21 days after the date that a petition seeking review is filed with the commission, and the time periods set forth in this paragraph may be waived only upon consent of all parties.

7. Any substantially affected person may appeal an interpretation rendered by a hearing officer panel by filing a


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petition with the commission. Such appeals shall be initiated in accordance with chapter 120 and the uniform rules of procedure and must be filed within 30 days after publication of the interpretation on the Building Code Information System or in the Florida Administrative Register. Hearings shall be conducted pursuant to chapter 120 and the uniform rules of procedure. Decisions of the commission are subject to judicial review pursuant to s. 120.68. The final order of the commission is binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction.

8. The burden of proof in any proceeding initiated in accordance with subparagraph 7. is on the party who initiated the appeal.

9. In any review proceeding initiated in accordance with this paragraph, including any proceeding initiated in accordance with subparagraph 7., the fact that an owner or builder has proceeded with construction may not be grounds for determining an issue to be moot if the issue is one that is likely to arise in the future.

This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings.

(d) Upon written application by any substantially affected person, contractor, or designer, or a group representing a substantially affected person, contractor, or designer, the commission shall issue or cause to be issued a formal

interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction as prescribed by paragraph (c).

(e) Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this subsection and may not be appealed to the commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

(f) Upon written application by any substantially affected person, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the agency is authorized to enforce. This subsection does not provide any powers, other than advisory, to the commission with respect to any decision of the State Fire Marshal made pursuant to chapter 633.

(g) The commission may designate a commission member who has demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in s. 553.512. The commission member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in s. 553.74(3).

(h) The commission shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The commission shall


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immediately implement the process before completing formal rulemaking. It is the intent of the Legislature that the commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, to which a party may pose questions regarding the interpretation of code provisions. It is the intent of the Legislature that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Building Code Information System. Such interpretations shall be advisory only and nonbinding on the parties and the commission.

(4) In order to administer this section, the commission may adopt by rule and impose a fee for filing requests for declaratory statements and binding and nonbinding interpretations to recoup the cost of the proceedings which may not exceed $125 for each request for a nonbinding interpretation and $250 for each request for a binding review or interpretation. For proceedings conducted by or in coordination with a third party, the rule may provide that payment be made directly to the third party, who shall remit to the department that portion of the fee necessary to cover the costs of the department.

~~(5) The commission may render declaratory statements in accordance with s. 120.565 relating to the provisions of the Florida Accessibility Code for Building Construction not attributable to the Americans with Disabilities Act Accessibility Guidelines. Notwithstanding the other provisions of this section, the Florida Accessibility Code for Building Construction and chapter 11 of the Florida Building Code may not~~


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~~be interpreted by, and are not subject to review under, any of the procedures specified in this section. This subsection has no effect upon the commission's authority to waive the Florida Accessibility Code for Building Construction as provided by s. 553.512.~~

Section 21. Effective October 1, 2014, present subsections (11) through (18) of section 553.79, Florida Statutes, are redesignated as subsections (12) through (19), respectively, a new subsection (11) is added to that section, and present subsection (18) is amended, to read:

553.79 Permits; applications; issuance; inspections.—

(11) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(19) ~~(18)~~ For the purpose of inspection and record retention, site plans or building permits ~~for a building~~ may be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

Section 22. Paragraph (b) of subsection (6) of section


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553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(6) Notwithstanding any other law, state universities, community colleges, and public school districts shall be subject to enforcement of the Florida Building Code under this part.

(b) If a state university, state community college, or public school district elects to use a local government's code enforcement offices:

1. Fees charged by counties and municipalities for enforcement of the Florida Building Code on buildings, structures, and facilities of state universities, state colleges, and public school districts may not be more than the actual labor and administrative costs incurred for plans review and inspections to ensure compliance with the code.

2. Counties and municipalities shall expedite building construction permitting, building plans review, and inspections of projects of state universities, state community colleges, and public schools ~~school districts~~ that are subject to the Florida Building Code according to guidelines established by the Florida Building Commission.

3. A party substantially affected by an interpretation of the Florida Building Code by the local government's code enforcement offices may appeal the interpretation to the local government's board of adjustment and appeal or to the commission under s. 553.775 if no local board exists. The decision of a local board is reviewable in accordance with s. 553.775.

This part may not be construed to authorize counties, municipalities, or code enforcement districts to conduct any


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permitting, plans review, or inspections not covered by the Florida Building Code. Any actions by counties or municipalities not in compliance with this part may be appealed to the Florida Building Commission. The commission, upon a determination that actions not in compliance with this part have delayed permitting or construction, may suspend the authority of a county, municipality, or code enforcement district to enforce the Florida Building Code on the buildings, structures, or facilities of a state university, state community college, or public school district and provide for code enforcement at the expense of the state university, state community college, or public school district.

Section 23. Subsections (1) and (2) of section 553.841, Florida Statutes, are amended to read:

553.841 Building code compliance and mitigation program.—

(1) The Legislature finds that knowledge and understanding by persons licensed or employed in the design and construction industries of the importance and need for complying with the Florida Building Code and related laws is vital to the public health, safety, and welfare of this state, especially for protecting consumers and mitigating damage caused by hurricanes to residents and visitors to the state. The Legislature further finds that the Florida Building Code can be effective only if all participants in the design and construction industries maintain a thorough knowledge of the code, code compliance and enforcement, duties related to consumers, and changes that ~~additions thereto which~~ improve construction standards, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage.

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Consequently, the Legislature finds that there is a need for a program to provide ongoing education and outreach activities concerning compliance with the Florida Building Code, the Florida Fire Prevention Code, construction plan and permitting requirements, construction liens, and hurricane mitigation.

(2) The Department of Business and Professional Regulation shall administer a program, designated as the Florida Building Code Compliance and Mitigation Program, to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and related provisions as specified in subsection (1) and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for design and construction compliance and mitigation of storm-related damage. The program shall also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in this state may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.

Section 24. Section 553.883, Florida Statutes, is created to read:

553.883 Smoke alarms in one-family and two-family dwellings and townhomes.—One-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, may use smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in lieu of retrofitting such dwelling with smoke alarms powered by the dwelling's electrical system. Effective January 1, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing


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battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years. All fire alarms, smoke detectors, smoke alarms, and ancillary components that are electronically connected to a system as part of a UL Listed centrally-monitored fire alarm station are exempt from the battery requirements of this section.

Section 25. Subsection (3) of section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system that provides a reliable and scientifically-based analysis of a building's energy consumption or energy features and allows a comparison to similar building types in similar climate zones where applicable. Specifically, the rating system shall use standard calculations, formulas, and scoring methods; be applicable nationally; compare a building to a clearly defined and researched baseline or benchmark; require qualified professionals to conduct the rating or assessment; and provide a labeling and recognition program with specific criteria or levels. Residential program benchmarks for new construction must be consistent with national building standards. Residential building program benchmarks for existing construction must be consistent with national home energy rating standards. The building energy-efficiency rating system shall require at least one level of oversight performed by an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods ~~established by~~


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~~the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center~~.

Section 26. Subsection (15) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(15)~~(a)~~ For one-story or two-story structures that are less than 10,000 square feet, whose occupancy is defined in the Florida Building Code and the Florida Fire Prevention Code as business or mercantile, a fire official shall enforce the wall fire-rating provisions for occupancy separation as defined in the Florida Building Code.

(16)(a)~~(b)~~ A structure, located on property that is classified for ad valorem purposes as agricultural, which is part of a farming or ranching operation, in which the occupancy is limited by the property owner to no more than 35 persons, and which is not used by the public for direct sales or as an educational outreach facility, is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference. This paragraph does not include structures used for residential or assembly occupancies, as defined in the Florida Fire Prevention Code.

(b) A tent up to 30 feet by 30 feet is exempt from the Florida Fire Prevention Code, including the national codes incorporated by reference.

Section 27. Subsection (1) of section 633.212, Florida Statutes, is amended to read:

633.212 Legislative intent; informal interpretations of the Florida Fire Prevention Code.—It is the intent of the


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Legislature that the Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations. It is the further intent of the Legislature that such processes provide for the expeditious resolution of the issues presented and that the resulting interpretation of such issues be published on the website of the division.

(1) The division shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Fire Prevention Code. The division may contract with and refer interpretive issues to a third party, selected based upon cost effectiveness, quality of services to be performed, and other performance-based criteria, which has experience in interpreting and enforcing the Florida Fire Prevention Code. It is the intent of the Legislature that the division establish a Fire Code Interpretation Committee composed of seven persons and seven alternates, equally representing each area of the state, to which a party can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions. The alternate member may respond to a nonbinding interpretation if a ~~the~~ member ~~notifies the Fire Code Interpretation Committee that he or she~~ is unable to respond.

Section 28. Section 713.32, Florida Statutes, is amended to read:

713.32 Insurance proceeds liable for demands.—The proceeds of any insurance that by the terms of the policy contract are

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payable to the owner of improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement had not been so damaged, destroyed, or removed. The insurer may only pay the proceeds of the policy of insurance to the insured named in the policy or to an entity that the owner and the insurer have explicitly agreed to in writing before payment and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

Section 29. Except as otherwise provided in this act, this act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete lines 2 - 37

725694

and insert:

An act relating to building construction policies; amending s. 377.6015, F.S.; removing a provision relating to representation in the Southern States Energy Compact; amending s. 377.703, F.S.; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; expanding the promotion of the development and use of renewable energy resources from goals related to solar energy to renewable energy in general; requiring the department to cooperate with the Florida Energy Systems Consortium in the development and use of renewable energy resources; amending s. 377.712, F.S.; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; authorizing the department to approve proposed activities relating to furtherance of the Southern States Energy Compact; amending s. 377.801, F.S.; conforming a cross-reference; amending s. 377.802, F.S.; amending the purpose of the Florida Energy and Climate Protection Act; amending s. 377.803, F.S.; conforming provisions to changes made by the act; creating s. 377.815, F.S.; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations; defining the term “alternative fuel”; authorizing the owner or operator of an alternative fueling station or an electric vehicle charging station to report certain


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information; amending s. 553.74, F.S.; adding a member to the Florida Building Commission as a representative of the Department of Agriculture and Consumer Services' Office of Energy; deleting obsolete provisions; repealing ss. 377.806 and 377.807, F.S., relating to the Solar Energy System Incentives Program and the Energy-Efficient Appliance Rebate Program, respectively; amending s. 162.12, F.S.; providing an additional method for local governments to provide notices to alleged code enforcement violators; amending s. 373.323, F.S.; revising the requirements of an applicant to take the water well contractor licensure examination; amending s. 440.103, F.S.; authorizing an employer to present certain documents electronically or physically in order to show proof and certify to the permit issuer that it has secured compensation for its employees; authorizing site plans or electronically transferred building permits to be maintained at the worksite in their original form or by electronic copy; requiring such plans or permits to be open to inspection by the building official or authorized representative; amending s. 514.0115, F.S.; authorizing the Department of Health to grant certain variances relating to public swimming pools and bathing places; amending s. 514.03, F.S.; requiring application for an operating permit before filing an application for a building permit for a public swimming pool; amending s. 514.031, F.S.; providing additional requirements for obtaining a public

swimming pool operating permit; providing a procedure for an applicant to respond to a request for additional information; requiring the Department of Health to review and provide to the local enforcement agency and the applicant any comments or proposed modifications to information submitted in the application; amending s. 553.37, F.S.; specifying inspection criteria for construction or modification of manufactured buildings or modules; amending s. 553.721, F.S.; making a technical change; amending s. 553.73, F.S.; authorizing an agency or local government to require rooftop equipment to be installed in compliance with the Florida Building Code if the equipment is being replaced or removed during reroofing and is not in compliance with the Florida Building Code's roof-mounted mechanical units requirements; providing that make-up air is not required for certain range hood exhaust systems; amending s. 553.77, F.S.; requiring building officials to recognize and enforce certain variance orders issued by the Department of Health; amending s. 553.775, F.S.; authorizing building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction; specifying procedures for such interpretations; deleting provisions relating to declaratory statements and interpretations of the Florida Accessibility Code for Building Construction, to conform; amending s. 553.79, F.S.; prohibiting a


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local enforcing agency from issuing a building permit for a public swimming pool without proof of application for an operating permit; requiring issuance of an operating permit before a certificate of completion or occupancy is issued; requiring the local enforcing agency to review the building permit application upon filing; authorizing such agency to confer with the Department of Health if it doesn't delay review of the application; authorizing site plans or building permits to be maintained at the worksite in their original form or in the form of an electronic copy; requiring the permit to be open to inspection; amending s. 553.80, F.S.; requiring counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of certain public schools, rather than certain public school districts; amending s. 553.841, F.S.; revising education and training requirements of the Florida Building Code Compliance and Mitigation Program; creating s. 553.883, F.S.; authorizing use of smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in certain circumstances; requiring use of such alarms by a certain date; providing an exemption; amending s. 553.993, F.S.; revising the definition of the term "building energy-efficiency rating system" to require consistency with certain national standards for new construction and existing construction; providing for oversight; amending s. 633.202, F.S.; exempting

certain tents from the Florida Fire Prevention Code; amending s. 633.212, F.S.; removing the requirement that an alternate member of the Fire Code Interpretation Committee provide notice to the committee in order to respond to a nonbinding interpretation when a member is unable to respond; amending s. 713.32, F.S.; revising the payment of proceeds of an insurance policy on real property; providing effective dates.

By the Committees on Agriculture; and Communications, Energy, and Public Utilities; and Senator Simpson

A bill to be entitled

An act relating to energy policies; amending s. 377.6015, F.S.; removing a provision relating to representation in the Southern States Energy Compact; amending s. 377.703, F.S.; requiring the Department of Agriculture and Consumer Services to include in its annual report recommendations for energy efficiency; expanding the promotion of the development and use of renewable energy resources from goals related to solar energy to renewable energy in general; requiring the department to cooperate with the Florida Energy Systems Consortium in the development and use of renewable energy resources; amending s. 377.712, F.S.; authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board; authorizing the department to approve proposed activities relating to furtherance of the Southern States Energy Compact; amending s. 377.801, F.S.; conforming a cross-reference; amending s. 377.802, F.S.; amending the purpose of the Florida Energy and Climate Protection Act; amending s. 377.803, F.S.; conforming provisions to changes made by the act; creating s. 377.815, F.S.; authorizing the department to post on its website information relating to alternative fueling stations or electric vehicle charging stations; defining the term "alternative fuel"; authorizing the owner or operator of an alternative fueling station or an electric vehicle charging station to report certain information;

amending s. 553.74, F.S.; adding a member to the Florida Building Commission as a representative of the Department of Agriculture and Consumer Services' Office of Energy; deleting obsolete provisions; repealing ss. 377.806 and 377.807, F.S., relating to the Solar Energy System Incentives Program and the Energy-Efficient Appliance Rebate Program, respectively; providing an effective date.

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

Section 1. Paragraphs (f) through (i) of subsection (2) of section 377.6015, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, and present paragraph (e) of that section is amended to read:

377.6015 Department of Agriculture and Consumer Services; powers and duties.—

(2) The department shall:

~~(e) Represent Florida in the Southern States Energy Compact pursuant to ss. 377.71-377.712.~~

Section 2. Paragraphs (f), (h), and (i) of subsection (2) of section 377.703, Florida Statutes, are amended to read:

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(f) The department shall submit an annual report to the Governor and the Legislature reflecting its activities and

making recommendations for ~~of~~ policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state ~~people of Florida~~. The report must ~~shall~~ include a report from the Florida Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and underway in the past year and ~~shall~~ include recommendations for energy efficiency and conservation programs for the state, including~~, but not limited to, the following factors~~:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy efficiency and conservation.

3. Development and conduct of educational and training programs relating to energy efficiency and conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601(2), the state energy policy, and recommendations for better fulfilling this policy.

(h) The department shall promote the development and use of renewable energy resources, in conformance with chapter 187 and s. 377.601, by:

1. Establishing goals and strategies for increasing the use of renewable ~~solar~~ energy in this state.

2. Aiding and promoting the commercialization of renewable energy resources ~~solar energy technology~~, in cooperation with the Florida Energy Systems Consortium, the Florida Solar Energy Center, Enterprise Florida, Inc., and any other federal, state, or local governmental agency that ~~which~~ may seek to promote

research, development, and the demonstration of renewable ~~solar~~ energy equipment and technology.

3. Identifying barriers to greater use of renewable energy resources ~~solar energy systems~~ in this state, and developing specific recommendations for overcoming identified barriers, with findings and recommendations to be submitted annually in the report to the Governor and Legislature required under paragraph (f).

4. In cooperation with the Department of Environmental Protection, the Department of Transportation, the Department of Economic Opportunity, Enterprise Florida, Inc., the Florida Energy Systems Consortium, the Florida Solar Energy Center, and the Florida Solar Energy Industries Association, investigating opportunities, pursuant to the national Energy Policy Act of 1992, the Housing and Community Development Act of 1992, and any subsequent federal legislation, for renewable energy resources, ~~solar~~ electric vehicles, and other renewable ~~solar~~ energy manufacturing, distribution, installation, and financing efforts that ~~which will~~ enhance this state's position as the leader in renewable ~~solar~~ energy research, development, and use.

5. Undertaking other initiatives to advance the development and use of renewable energy resources in this state.

In the exercise of its responsibilities under this paragraph, the department shall seek the assistance of the renewable ~~solar~~ energy industry in this state and other interested parties and may ~~is authorized to~~ enter into contracts, retain professional consulting services, and expend funds appropriated by the Legislature for such purposes.

(i) The department shall promote energy efficiency and conservation in all energy use sectors throughout the state and be ~~shall constitute~~ the state agency primarily responsible for this function. The Department of Management Services, in consultation with the department, shall coordinate the energy conservation programs of all state agencies and review and comment on the energy conservation programs of all state agencies.

Section 3. Section 377.712, Florida Statutes, is amended to read:

377.712 Florida participation.—

(1)(a) The Governor shall appoint one member of the Southern States Energy Board. The member or the Governor may designate another person as the deputy or assistant to such member.

(b) The Commissioner of Agriculture may appoint one member of the Southern States Energy Board. The member or the commissioner may designate another person as the assistant or deputy to such member.

(c) ~~(b)~~ The President of the Senate shall appoint one member of the Southern States Energy Board. The member or the president may designate another person as the assistant or deputy to such member.

(d) ~~(c)~~ The Speaker of the House of Representatives shall appoint one member of the Southern States Energy Board. The member or the speaker may designate another person as the assistant or deputy to such member.

(2) Any supplementary agreement entered into under s. 377.711(6) requiring the expenditure of funds may ~~shall~~ not

become effective as to Florida until the required funds are appropriated by the Legislature.

(3) Departments, agencies, and officers of this state, and its subdivisions are authorized to cooperate with the board in the furtherance of ~~any of~~ its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, ~~either~~ the Governor or the Department of Agriculture and Consumer Services ~~Department of Health~~.

Section 4. Section 377.801, Florida Statutes, is amended to read:

377.801 Short title.—Sections 377.801-377.804 ~~377.801-377.807~~ may be cited as the "Florida Energy and Climate Protection Act."

Section 5. Section 377.802, Florida Statutes, is amended to read:

377.802 Purpose.—This act is intended to provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals. The grant programs in this act are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts. ~~This act is also intended to provide incentives for the purchase of energy efficient appliances and rebates for solar energy equipment installations for residential and commercial~~

~~buildings.~~

Section 6. Section 377.803, Florida Statutes, is amended to read:

377.803 Definitions.—As used in ss. 377.801-377.804 ~~ss. 377.801-377.807~~, the term:

(1) "Act" means the Florida Energy and Climate Protection Act.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(4) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(5) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

~~(6) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.~~

~~(7) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.~~

~~(8) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.~~

Section 7. Section 377.815, Florida Statutes, is created to read:

377.815 Alternative fueling stations and electric vehicle charging stations.—The Department of Agriculture and Consumer Services may post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use in this state.

(1) As used in this section, the term "alternative fuel" means nontraditional transportation fuel, such as pure methanol, ethanol, and other alcohols; blends of 85 percent or more of alcohol with gasoline; natural gas and liquid fuels domestically produced from natural gas; liquefied petroleum gas; coal-derived liquid fuels; hydrogen; electricity; pure biodiesel; fuels, other than alcohol, derived from biological materials; and P-series fuels.

(2) An owner or operator of an alternative fueling station that is available in this state may report the following information to the department:

(a) The type of alternative fuel available;

(b) The station's name, address, or location; or

(c) The fees or costs associated with the alternative fuel that is available for purchase.

(3) The owner or operator of an electric vehicle charging station that is available in this state may report the following information to the department:

(a) The station's name, address, or location; or

(b) The fees or costs, if any, associated with the electric vehicle charging services provided by the station.

Section 8. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 27 ~~26~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors ~~Association~~ and the National Electrical Contractors Association, Florida Chapter,

are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' ~~Contractors~~ National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The

Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Product ~~Products~~ Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy who is appointed from a list of three nominees provided by the

Commissioner of Agriculture. If the Governor refuses to appoint a nominee within 60 days after receipt of such list, the Governor shall inform the commissioner and the commissioner shall submit a new list of three nominees.

(y) ~~(x)~~ One member who shall be the chair.

~~Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.~~

Section 9. Sections 377.806 and 377.807, Florida Statutes, are repealed.

Section 10. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-24
Meeting Date

Topic Building Code

Bill Number 1044 *(if applicable)*

Name LEE MOFFITT

Amendment Barcode 725694 *(if applicable)*

Job Title ATTORNEY

Address 2927 N.W. Perimeter
Street

Phone 813 760-5717

PALM CITY FL 34990
City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing BOMA (BUILDING OWNERS AND MANAGERS ASSOC)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-24-14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Energy - Bldg. Codes

Bill Number SB 1044 *(if applicable)*

Name KARL HEBRANK

Amendment Barcode 725694 *(if applicable)*

Job Title

Address 113 EAST COLLEGE AVE.
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone

E-mail

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

Representing FLORIDA HOME BUILDERS

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic QECB - Energy

Bill Number 1044 *(if applicable)*

Name Ryan Matthews

Amendment Barcode 810258 *(if applicable)*

Job Title Leg Advocate

Address PO Box 1757 *Street*

Phone 222 9684

Tallahassee *City* FL *State* 32302 *Zip*

E-mail rmatthews@flcities.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic _____ Bill Number 1044 *(if applicable)*

Name ROBERT STUART Amendment Barcode 725694 *(if applicable)*

Job Title GOVERNMENT CONSULTANT

Address 301 E PINE ST. Phone 407-843-8880
Street

ORLANDO FL 32801 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AQUATIC DESIGN ENGINEERING

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/24/14
Meeting Date

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

Topic Energy Policies

Bill Number SB 1044 *(if applicable)*

Name Bruce Kershner

Amendment Barcode 725694 *(if applicable)*

Job Title

Address 231 West Bay Ave
Street
Longwood FL 32750
City *State* *Zip*

Phone 407 830 1882

E-mail RBKershner@att.net

Speaking: ☑ For ☐ Against ☐ Information

Representing United Pool and Spa Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic Energy; Amendment 725694 Bill Number SB 1044 *(if applicable)*

Name Eddy Labrador Amendment Barcode 725694 *(if applicable)*

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Ave., Room 426 Phone (954) 357-7575
Street

Fort Lauderdale FL 33301 E-mail elabrador@broward.org
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Broward County

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic ENERGY POLICIES

Bill Number 1044 *(if applicable)*

Name DAVID CULLEN

Amendment Barcode *(if applicable)*

Job Title

Address 1674 UNIVERSITY PKWY #296
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941-323-2404

E-mail cullensee@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/2014
Meeting Date

Topic _____ Bill Number 1044 *(if applicable)*

Name Brian Pitts Amendment Barcode _____ *(if applicable)*

Job Title Trustee

Address St. Petersburg Phone 727/897-9291
Street

8119 Newton Ave S FL 33705 E-mail justice2jesus@yahoo.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Justice-2-Jesus

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-22-2014
Meeting Date

Topic Energy

Bill Number SB 1044 *(if applicable)*

Name Susan Glickman

Amendment Barcode _____ *(if applicable)*

Job Title Florida Director

Address PO Box 310
Street
Indian Rocks Beach FL
City *State* *Zip*

Phone 7077429003

E-mail susan@3378cleanenergy.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Southern Alliance for Clean Energy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1090
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Latvala and others
SUBJECT:	Homelessness
DATE:	April 24, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Pingree	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1090 requires the Department of Economic Opportunity (DEO) to provide training and technical assistance regarding affordable housing to designated lead agencies of homeless assistance continuums of care (CoC) that receive funding from the Department of Children and Families (DCF). The bill requires the training and technical assistance be provided by a nonprofit entity that meets the requirements of s. 420.531, F.S.

The bill revises the "Challenge Grant" program administered by the State Office on Homelessness. The Department of Children and Families (DCF) must establish varying award levels, based upon the total population within the continuum of care (CoC) catchment area and which must reflect the differing degrees of homelessness in the catchment planning area. The bill provides that local homeless assistance CoC plans must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider. Lead agencies are required to document matching funds or in-kind support provided by local government and private organizations in an amount equal to the grant request. The bill provides that "Challenge Grants" may be used to fund any of the housing, program, or service needs included in the local homeless CoC plan.

The Florida Housing Finance Corporation is required to distribute the first four percent appropriated to it from the Local Government Housing Trust Fund to the DEO and the DCF as follows: the DEO will receive 5 percent to provide training and technical assistance to designated lead agencies in each CoC and DCF will receive 95 percent to provide operating and other support to those agencies.

The bill does not change the annual distribution of tax revenues to the Local Government Housing Trust Fund (LGHTF).[1] However, it doe change the allocation of funds appropriated from the LGHTF to the Florida Housing Finance Corporation (FHFC) for the State Housing Initiatives Partnership (SHIP) Program. See Section V.

II. Present Situation:

In s. 420.6015, F.S., the Legislature found that:

- Decent, safe, and sanitary housing for persons of very low income, low income, and moderate income are a critical need in the state;[2]
- New and rehabilitated housing must be provided at a cost affordable to such persons in order to alleviate this critical need;[3]
- Special programs are needed to stimulate private enterprise to build and rehabilitate housing in order to help eradicate slum conditions and provide housing for very-low-income persons, low-income persons, and moderate-income persons as a matter of public purpose;[4] and
- Public-private partnerships are an essential means of bringing together resources to provide affordable housing.[5]

In 1992, the Florida Legislature enacted the William E. Sadowski Affordable Housing Act. This Act created a dedicated source of revenue for affordable housing from a portion of documentary stamp taxes on the transfer of real estate. This legislation provided both the funding mechanism for state and local programs, as well as a flexible, but accountable framework for local programs to operate. The dedicated revenue comes from a 10 cent increase to the documentary stamp tax paid on the transfer of real estate, which began in August 1992 and a re-allocation of 10 cents of existing documentary stamp tax revenues from general revenue to the affordable housing trust funds, which began in July 1995.[6] In 2005, the Legislature adopted a cap restricting the amount of revenue that may flow into the housing trust funds to $243 million per year, with a mechanism for a small increase over time. The cap went into effect July 1, 2007.[7] In 2011, the Legislature removed the cap, but created a new annual requirement starting in July 2012, which provides that the first $75 million in documentary stamp tax collections credited to the housing trust funds is automatically transferred to the State Economic Enhancement and Development (SEED) Trust Fund within the DEO.[8]

In 2001, the Florida Legislature created the State Office on Homelessness (office) within the DCF to provide interagency, council, and other related coordination on issues relating to homelessness.[9] The DCF established local coalitions to plan, network, coordinate, and monitor

[1] Section 201.15, F.S.
[2] Section 420.6015(1), F.S.
[3] Section 420.6015(2), F.S.
[4] Section 420.6015(6), F.S.
[5] Section 420.6015(7), F.S.
[6] Overview of the Florida Housing Finance Corporation, (Jan. 2014) (on file with the Senate Committee on Children, Families and Elder Affairs.)
[7] *Id.*
[8] *Id.*
[9] Section 420.622(1), F.S.

the delivery of services to the homeless.[10] Groups and organizations provided the opportunity to participate in such coalitions include: organizations and agencies providing mental health and substance abuse services; county health departments and community health centers; organizations and agencies providing food, shelter, or other services targeted to the homeless; local law enforcement agencies; regional workforce boards; county and municipal governments; local public housing authorities; local school districts and local organizations and agencies serving specific subgroups of the homeless population such as veterans, victims of domestic violence, persons with HIV/AIDS, runaway youth, and local community-based care alliances.[11]

The local coalition serves as the lead agency for the local homeless assistance continuum of care (CoC).[12] A local CoC is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.[13] The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions.[14]

The DCF interacts with the state's 28 CoCs through the office, which serves as the state's central point of contact on homelessness. The Office has designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The office has made these designations in consultation with the local homeless coalitions and the Florida offices of the federal Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes the community eligible to compete for the state's Challenge Grant and Homeless Housing Assistance Grant.[15]

The office is authorized to accept and administer moneys appropriated to it to provide "Challenge Grants" annually to designated lead agencies of homeless assistance continuums of care.[16] The office may award grants in an amount of up to $500,000 per lead agency.[17] A lead agency may spend a maximum of eight percent of its funding on administrative costs. To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated area.[18]

The office is authorized to accept and administer moneys appropriated to it to provide Homeless Housing Assistance Grants annually to lead agencies of local homeless assistance continuum of care. The grants may not exceed $750,000 per project and an applicant may spend a maximum of

[10] Section 420.623(1), F.S.
[11] Section 420.623(1)(a)-(j), F.S.
[12] Section 420.623((2)(a), F.S.
[13] Section 420.624(1), F.S.
[14] Section 420.624(2), F.S.
[15] *Lead Agencies;* Florida Department of Children and Families; *available at*: http://www.myflfamilies.com/service-programs/homelessness/lead-agencies) (last visited Mar. 20, 2014).
[16] "Section 420.621(1), F.S. defines "Continuum of Care" to mean the community components needed to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness."
[17] Section 420.622(4), F.S.
[18] *Id.*

five percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds available for the eligible grant activities may be appropriated, received from donations, gifts, or from any public or private source.[19]

The Legislature established the Training and Technical Assistance Program (program) to assist staff and board members of community based organizations that need additional training in housing development as well as technical support to assist in them in gaining the experience needed to better serve their communities.[20]

The training component must be designed to build the housing development capacity of community-based organizations and local governments as a permanent resource for the benefit of communities in the state. Training activities may include workshops, seminars, and programs developed in conjunction with state universities and community colleges.[21]

The technical assistance component must be designed to assist applicants for state-administered programs in developing applications and in expediting project implementation. Technical assistance activities for the staffs of community-based organizations and local governments who are directly involved in the production of affordable housing may include workshops for program applicants, onsite visits, and guidance in achieving project completion.[22]

The DEO is required to secure the necessary expertise to provide training and technical assistance to local government and state agency staffs, community-based organizations, and to persons forming community-based organizations for the purpose of developing new housing or rehabilitating existing housing. Such housing must be affordable for moderate income, very low and low income persons.[23] To meet the requirements, the DEO is authorized to:

- Enter into contracts with the federal government or with other state agencies, local governments, or with any other person, association, corporation, or entity;
- Seek and accept funding from any public or private source; and
- Adopt and enforce rules consistent with the program.

III. Effect of Proposed Changes:

Section 1 amends s. 420.6015, F.S., to include designated lead agencies of homeless assistance continuums of care, in addition to local governments and community-based organizations, as entities that the DEO must provide training and technical assistance to meet the needs of homeless, very-low-income, low-income and moderate-income people. Such assistance must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance in the FHFC's Affordable Housing Catalyst Program.[24]

[19] Section 420.602(5), F.S.
[20] Section 420.606(2), F.S.
[21] Section 420.606(3)(a), F.S.
[22] Section 420.606(3)(b), F.S.
[23] Section 420.606(3), F.S.
[24] Section 420.531, F.S.

Section 2 amends Section 420.622, F.S., to direct the DCF to establish varying levels of grant awards up to $500,000 per lead agency. The DCF must specify a grant award level in the notice of the solicitation of grant applications. Criteria for a lead agency to qualify for the grant is included in this section and the lead agency is required to document the commitment of local government and private organizations to provide matching funds or in-kind support in an amount equal to the grant requested. The grant may be used to fund any of the housing, program, or service needs in the local homeless assistance continuum of care plan. Sub-grants to local agencies may be provided. The lead agency is required to submit a final report to the DCF documenting the outcomes achieved by the grant.

Section 3 amends s. 420.9073, F.S., to distribute four percent of the total amount appropriated to the FHFC for the State Housing Initiatives Partnership (SHIP) Program from the Local Government Housing Trust Fund as follows:

- Ninety-five percent of the four percent is to be provided to the DCF to provide operating and other support to the lead agency in each continuum of care;
- Five percent of the four percent is to be provided to the DEO to provide training and technical assistance to the lead agencies receiving support through a contract with a nonprofit entity.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The March 2014 Revenue Estimating Conference for Documentary Stamp Tax Collections and Distributions projected that $158,470,000 will be distributed to the Local

Government Housing Trust Fund in Fiscal Year 2014-2015. If the Legislature appropriates that amount for the State Housing Initiatives Partnership (SHIP) Program, under CS/SB 1090, the FHFC would be required to distribute four percent, totaling $6,338,800, to the DEO and the DCF before distributing any other funding. The DCF would receive $6,021,860 (95 percent) and the DEO would receive $316,940 (five percent).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 420.606, 420.622, and 420.9073.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 25, 2014:
The Committee Substitute:

- Allows local government and private organizations, when applying for grants awarded by the department, to use matching funds or in-kind support in an amount equal to the grant requested.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and Senators Latvala, Sobel, and Garcia

586-03144-14 20141090c1

A bill to be entitled

An act relating to homelessness; amending s. 420.606, F.S.; revising legislative findings; requiring the Department of Economic Opportunity to provide training and technical assistance to certain designated lead agencies of homeless assistance continuums of care; requiring that the provision of such training and assistance be delegated to certain nonprofit entities; conforming provisions to changes made by the act; amending s. 420.622, F.S.; requiring the department to establish award levels for "Challenge Grants"; specifying criteria to determine award levels; requiring the department, after consultation with the Council on Homelessness, to specify a grant award level in the notice of solicitation of grant applications; revising qualifications for the grant; specifying authorized uses of grant funds; requiring a lead agency that receives a grant to submit a report to the department; amending s. 420.9073, F.S.; requiring the Florida Housing Finance Corporation to distribute to the department and the Department of Children and Families certain funds from the Local Government Housing Trust Fund for the purpose of providing support, training, and technical assistance to designated lead agencies of continuums of care; providing an effective date.

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

586-03144-14 20141090c1

Section 1. Subsections (1) through (3) of section 420.606, Florida Statutes, are amended to read:

420.606 Training and technical assistance program.—

(1) LEGISLATIVE FINDINGS.—In addition to the legislative findings set forth in s. 420.6015, the Legislature finds and declares that:

(a) Housing in economically declining or distressed areas is frequently substandard and is often unaffordable or unavailable to homeless persons, very-low-income persons, and low-income persons;

(b) Community-based organizations often have limited experience in development of quality housing for homeless persons, very-low-income persons, and low-income persons in economically declining or distressed areas; ~~and~~

(c) The staffs and board members of community-based organizations need additional training in housing development as well as technical support to assist them in gaining the experience they need to better serve their communities; and~~.~~

(d) The staffs of state agencies and local governments, whether directly involved in the production of affordable or available housing or acting in a supportive role, can better serve the goals of state and local governments if their expertise in housing development is expanded.

(2) PURPOSE.—The purpose of this section is to provide community-based organizations, ~~and~~ staff of state and local governments, and designated lead agencies of homeless assistance continuums of care with the necessary training and technical assistance to meet the needs of homeless persons, very-low-income persons, low-income persons, and moderate-income persons

for standard, affordable housing.

(3) TRAINING AND TECHNICAL ASSISTANCE PROGRAM.—The Department of Economic Opportunity shall be responsible for securing the necessary expertise to provide training and technical assistance to:

(a) Staff of local governments, to staff of state agencies, as appropriate, ~~and~~ to community-based organizations, and to persons forming such organizations, which are formed for the purpose of developing new housing and rehabilitating existing housing that ~~which~~ is affordable for very-low-income persons, low-income persons, and moderate-income persons.

1.~~(a)~~ The training component of the program shall be designed to build the housing development capacity of community-based organizations and local governments as a permanent resource for the benefit of communities in this state.

a.~~1.~~ The scope of training must ~~shall~~ include, but need not be limited to, real estate development skills related to affordable housing, including the construction process and property management and disposition, the development of public-private partnerships to reduce housing costs, model housing projects, and management and board responsibilities of community-based organizations.

b.~~2.~~ Training activities may include, but are not limited to, materials for self-instruction, workshops, seminars, internships, coursework, and special programs developed in conjunction with state universities and community colleges.

2.~~(b)~~ The technical assistance component of the program shall be designed to assist applicants for state-administered programs in developing applications and in expediting project

implementation. Technical assistance activities for the staffs of community-based organizations and local governments who are directly involved in the production of affordable housing may include, but are not limited to, workshops for program applicants, onsite visits, guidance in achieving project completion, and a newsletter to community-based organizations and local governments.

(b) Designated lead agencies of homeless assistance continuums of care which receive operating or other support under s. 420.9073(7) from the Department of Children and Families to provide or secure housing, programs, and other services for homeless persons. Such training and technical assistance must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under s. 420.531.

Section 2. Subsection (4) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(4) ~~Not less than 120 days after the effective date of this act,~~ The State Office on Homelessness, with the concurrence of the Council on Homelessness, may accept and administer moneys appropriated to it to provide annual "Challenge Grants" ~~annually~~ to lead agencies of ~~for~~ homeless assistance continuums of care designated by the State Office on Homelessness pursuant to s. 420.624. The department shall establish varying levels of grant awards ~~A lead agency may be a local homeless coalition, municipal or county government, or other public agency or private, not-for-profit corporation. Such grants may be~~ up to

$500,000 per lead agency. Award levels shall be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas. The department, in consultation with the Council on Homelessness, shall specify a grant award level in the notice of the solicitation of grant applications.

(a) To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated catchment area. The continuum of care plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider. The lead agency shall also document the commitment of local government and private organizations to provide matching funds or in-kind support in an amount equal to the grant requested.

(b) Preference must be given to those lead agencies that have demonstrated the ability of their continuum of care to provide quality services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act and private funding for the provision of services to homeless persons.

(c) Preference must be given to lead agencies in catchment areas with the greatest need for the provision of housing and services to the homeless, relative to the population of the catchment area.

(d) The grant may be used to fund any of the housing, program, or service needs included in the local homeless assistance continuum of care plan. The lead agency may allocate the grant to programs, services, or housing providers that

implement the local homeless assistance continuum of care plan. The lead agency may provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to the department. A lead agency may spend a maximum of 8 percent of its funding on administrative costs.

(e) The lead agency shall submit a final report to the department documenting the outcomes achieved by the grant in enabling persons who are homeless to return to permanent housing thereby ending such persons' episodes of homelessness.

Section 3. Present subsection (7) of section 420.9073, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

420.9073 Local housing distributions.—

(7) Notwithstanding subsections (1)-(4), the corporation shall first distribute 4 percent of the total amount to be distributed each fiscal year from the Local Government Housing Trust Fund to the Department of Children and Families and the Department of Economic Opportunity as follows:

(a) The Department of Children and Families shall receive 95 percent of such amount to provide operating and other support to the designated lead agency in each continuum of care for the benefit of the designated catchment area as described in s. 420.624.

(b) The Department of Economic Opportunity shall receive 5 percent of such amount to provide training and technical assistance to lead agencies receiving operating and other support under paragraph (a) in accordance with s. 420.606(3). Training and technical assistance funded by this distribution

shall be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under s. 420.531.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 26, 2014

The Honorable Senator Joe Negron, Chair
Senate Appropriations Committee
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Negron:

I respectfully request that Senate Bill 1090/Homelessness be placed on the agenda of the Senate Appropriations Committee at your earliest convenience. The bill was referred favorably referred by the Senate Children, Families and Elder Affairs Committee on March 25, 2014.

This bill will expand grant programs to Florida communities to help fund temporary and transitional housing and services for the homeless. It will also provide training and technical support to qualified agencies serving Florida's homeless.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Cindy Kynoch, staff director; Alicia Weiss, administrative assistant

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
❒ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Homelessness

Bill Number 1080 *(if applicable)*

Name Trey Price

Amendment Barcode *(if applicable)*

Job Title Public Policy Representative

Address 200 S. Monroe St
Street

Phone (850) 224-1400

Tallahassee FL 32301
City *State* *Zip*

E-mail Trey@floridarealtors.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Homelessness

Bill Number SB 1090 *(if applicable)*

Name Robert Beck

Amendment Barcode _____ *(if applicable)*

Job Title Adams St. Advocates

Address 205 S. Adams
Street
Tall FL 32301
City *State* *Zip*

Phone 766 1410

E-mail Robert@Adamstadvocates.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA Coalition for the Homeless

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

Topic 1090 Bill Number 1090 *(if applicable)*

Name Casey Cook Amendment Barcode *(if applicable)*

Job Title Legislative Advocate

Address PO Box 1757 Phone 701 3701
Street

Tallahassee FL 32302 E-mail ccook@flcities.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida League of Cities

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1206
INTRODUCER:	Education Committee and Senator Montford
SUBJECT:	Agricultural Industry Certifications
DATE:	April 21, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Akhavein	Becker	AG	**Favorable**
3.	Elwell	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 establishes a process by which industry certifications for farm occupations are added to the list of certifications approved for funding in public schools and postsecondary institutions.

Specifically, the bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the University of Florida and Florida Agriculture and Mechanical University, to annually furnish to the State Board of Education (SBE) and the Department of Education (DOE) industry certifications for farm occupations to be placed on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List.

Additionally, the bill requires that the SBE use the expertise of the DACS to develop and adopt rules for implementing an industry certification process. The list of industry certifications approved by Workforce Florida, Inc., the DACS, and the DOE must be published and updated annually.

The bill requires the DOE to include the DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

This bill does not have a fiscal impact to the state.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Section 1003.492, F.S., requires the State Board of Education (SBE) to work with Workforce Florida, Inc., to establish and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) must define industry certification based on the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.[1] The DEO currently defines industry certification as "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."[2]

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc., must determine industry certifications that meet the DEO definition and compile them into a list.[3] Second, the Department of Education (DOE) must:

- Review the list;[4]
- Identify certifications that are academically rigorous and at least 150 hours in length;[5]
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;[6]
- Consider district requests that industry certifications be added to the approved list;[7] and
- Annually publish a final list.[8]

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demand job requirements in the regional economy.[9]

Workforce Florida, Inc.'s list includes 428 industry certifications.[10] From this list, the DOE has identified 201 industry certifications and 287 postsecondary industry certifications as eligible for funding in the 2013-2014 school year.[11] Most industry certifications require passage of a subject area examination and some combination of work experience, educational achievement, or on-

[1] Section 1003.492(2), F.S.
[2] Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE*, at 1 (2012), *available at* http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf
[3] Section 1003.492(2), F.S.; Rule 6A-6.0573(1)-(3), F.A.C.
[4] Rule 6A-6.0573(3), F.A.C.
[5] Rule 6A-6.0573(3)(b), F.A.C.
[6] Rule 6A-6.0573(4), F.A.C.
[7] Rule 6A-6.0573(4)(a)-(4)(b), F.A.C.
[8] Rule 6A-6.0573(8), F.A.C.
[9] Section 1003.492(2), F.S.
[10] Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List*, *available at* http://careersourceflorida.com/wp-content/uploads/2014/02/2013-14ComprehensiveCondensedFINAL.pdf
[11] Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. See also Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), *available at* www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf.

the-job training. The DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe System, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and Florida Department of Health.[12]

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).[13] The list may include both industry certifications that are achievable in a secondary education program and those that have minimum age, grade-level, diploma or degree, post-graduation work experience of at least twelve months, or other requirements that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allows students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.[14]

The DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.[15]

III. Effect of Proposed Changes:

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the State Board of Education (SBE) and the Department of Education (DOE) information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The bill establishes that the process by which industry certifications for farm occupations are added to the list of certifications approved for funding in public schools and postsecondary institutions is identical to the current process in existing law for identifying industry certifications for placement on this list.[16]

The bill defines industry certification as a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a time-limited credential that is nationally recognized and must be at least one of the following:

- Within an industry that addresses a critical local or statewide economic need;

[12] *See* Florida Department of Education, Division of Career and Adult Education, *Industry Certification Funding List*, *available at* http://www.fldoe.org/workforce/pdf/PS-ICFL.pdf.
[13] Section 1011.62(1)(p), F.S.; Rule 6A-6.0573(3), F.A.C.
[14] Section 1008.44(3), F.S.
[15] Section 1003.492(3), F.S.
[16] Section 1008.44, F.S.

- Linked to an occupation that is included in the workforce system's targeted occupation list; or
- Linked to an occupation that is identified as emerging.

The bill requires the SBE to use the expertise of the DACS to develop and adopt rules for implementing an industry certification process. The list of industry certifications approved by Workforce Florida, Inc., the DACS, and the DOE must be published and updated annually.

The bill requires the DOE to include the DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1206 does not have a fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 570.07, 1003.492, and 1003.4935.

IX. Additional Information:

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

CS by Education on March 25, 2014
The committee substitute differs from SB 1206 in the following ways:

- Removes secondary schools and "other appropriate agencies" from the list of institutions the Department of Agriculture should cooperate with to provide data.
- Removes the agricultural industry, the Institute of Food and Agricultural Sciences at the University of Florida, Florida Agricultural and Mechanical University, secondary schools, and "other appropriate agencies" the Department of Agriculture should consult with in determining data.
- Removes the term "time limited" in describing an industry certification.

B. Amendments:

None.

By the Committee on Education; and Senator Montford

581-03156A-14 20141206c1

A bill to be entitled

An act relating to agricultural industry certifications; amending s. 570.07, F.S.; requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on industry certification funding lists; amending s. 1003.492, F.S.; defining the term "industry certification"; requiring the state board to adopt rules for implementing an industry certification process for farm occupations; amending s. 1003.4935, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (43) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43) In cooperation with the Institute of Food and Agricultural Sciences at the University of Florida and the College of Agriculture and Food Sciences at Florida Agricultural and Mechanical University, annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the

581-03156A-14 20141206c1

Postsecondary Industry Certification Funding List pursuant to s. 1008.44. The information and industry certifications provided by the department must be based upon the best available data.

Section 2. Section 1003.492, Florida Statutes, is amended to read:

1003.492 Industry-certified career education programs.—

(1) Secondary schools offering career-themed courses, as defined in s. 1003.493(1)(b), and career and professional academies shall be coordinated with the relevant and appropriate industry to prepare a student for further education or for employment in that industry.

(2) As used in this section, the term "industry certification" means a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, and resulting in the award of a credential that is nationally recognized and must be at least one of the following:

(a) Within an industry that addresses a critical local or statewide economic need.

(b) Linked to an occupation that is included in the workforce system's targeted occupation list.

(c) Linked to an occupation that is identified as emerging.

(3) ~~(2)~~ The State Board of Education shall use the expertise of Workforce Florida, Inc., and the Department of Agriculture and Consumer Services, to develop and adopt rules pursuant to ss. 120.536(1) and 120.54 for implementing an industry certification process.

(a) For nonfarm occupations, industry certification shall be ~~defined by the Department of Economic Opportunity,~~ based upon

the highest available national standards for specific industry certification~~,~~ to ensure student skill proficiency and to address emerging labor market and industry trends. A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certifications based on high-skill, high-wage, and high-demand job requirements in the regional economy. ~~The list of industry certifications approved by Workforce Florida, Inc., and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.~~

(b) For farm occupations submitted pursuant to s. 570.07, industry certification shall demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.

(4) The list of industry certifications approved by Workforce Florida, Inc., the Department of Agriculture and Consumer Services, and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.

(5)~~(3)~~ The Department of Education shall collect student achievement and performance data in industry-certified career education programs and career-themed courses and shall work with Workforce Florida, Inc., and the Department of Agriculture and Consumer Services in the analysis of collected data. The data collection and analyses shall examine the performance of participating students over time. Performance factors shall include, but not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry

certification, and employer satisfaction. The results of this study shall be submitted to the President of the Senate and the Speaker of the House of Representatives annually by December 31.

Section 3. Subsection (3) of section 1003.4935, Florida Statutes, is amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(3) Beginning with the 2012-2013 school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(5) ~~s. 1003.492(3)~~ for students enrolled in an academy or a career-themed course.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

April 14, 2014

Senator Joe Negron, Chair
Senate Committee on Appropriations
201 The Capitol
Tallahassee, Florida 32399-1100

Dear Chairman Negron:

I respectfully request that the following bill(s) be scheduled for a hearing before the Senate Full Appropriations Committee:

SB 628 Education Facilities Financing
SB 886 Florida Teachers Supply Assistance Program
SB 908 Education Funding
SB 1202 Career Centers and Charter Technical Career Centers
SB 1206 Agricultural Industry Certifications

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

Sincerely,

William "Bill" Montford
State Senator, District 3

Cc Cindy Kynoch Staff Director

WM/md

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Ag Industry Certifications

Bill Number SB 1206 (if applicable)

Name Adam Basford

Amendment Barcode (if applicable)

Job Title Dir. Legislative Affairs

Address 315 S Calhoun St (Street)

Phone 222-2557

Tallahassee (City) FL (State) 32301 (Zip)

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Farm Bureau

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/24/14
Meeting Date

Topic Ag Industry Cert

Bill Number SB1206 *(if applicable)*

Name Brewster Bevis

Amendment Barcode _____ *(if applicable)*

Job Title Senior Vice President

Address 516 N Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

E-mail bbevis@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/24/2014 9:04:27 AM
Ends: 4/24/2014 10:33:54 AM Length: 01:29:28

9:04:28 AM Sen. Negron (Chair)
9:05:19 AM
9:05:20 AM S 444
9:05:25 AM Sen. Galvano
9:06:06 AM Sen. Negron
9:06:13 AM PCS 314816
9:06:24 AM Am. 892866
9:06:29 AM Sen. Galvano
9:06:50 AM Sen. Negron
9:06:58 AM Am. 818218
9:07:02 AM Sen. Galvano
9:07:14 AM Sen. Negron
9:07:23 AM Am. 319214
9:07:27 AM Sen. Galvano
9:07:40 AM Sen. Negron
9:07:44 AM S 444 (cont.)
9:07:53 AM Jim Brainerd, Florida Association of Insurance Agents (waives in support)
9:07:59 AM Logan McFaddin, Director of Legal Affairs, Office of the Chief Financial Officer (waives in support)
9:08:45 AM
9:08:46 AM S 1090
9:08:59 AM Sen. Latvala
9:09:49 AM Sen. Negron
9:09:54 AM Casey Cook, Legislative Advocate, Florida League of Cities (waives in support)
9:09:57 AM Robert Beck, Adams St. Advocates, Florida Coalition for the Homeless (waives in support)
9:10:03 AM Troy Price, Public Policy Representative, Florida Realtors (waives in support)
9:10:50 AM
9:10:51 AM S 810
9:10:53 AM Sen. Galvano
9:11:27 AM Sen. Negron
9:11:51 AM Brian Pitts, Trustee, Justice-2-Jesus
9:13:37 AM Sen. Latvala
9:13:49 AM Sen. Negron
9:14:01 AM Sen. Galvano
9:14:30 AM Sen. Negron
9:15:20 AM
9:15:21 AM S 550
9:15:24 AM Sen. Hukill
9:15:28 AM PCS 435328
9:16:23 AM Sen. Negron
9:16:32 AM Eric Westfall, Lieutenant, Florida Sheriff's Association (waives in support)
9:16:44 AM Brian Pitts, Trustee, Justice-2-Jesus
9:18:27 AM Sen. Negron
9:18:30 AM Am. 240590
9:18:34 AM Sen. Hukill
9:18:35 AM Sen. Negron
9:18:37 AM S 550 (cont.)
9:18:43 AM Sen. Joyner
9:20:28 AM Sen. Negron
9:21:28 AM Sen. Benacquisto
9:21:33 AM
9:21:34 AM S 1044
9:21:36 AM Sen. Simpson

9:21:53 AM Sen. Joyner
9:22:02 AM Sen. Simpson
9:22:16 AM Sen. Latvala
9:22:35 AM Sen. Benacquisto
9:22:45 AM Am. 788564
9:22:50 AM Sen. Galvano
9:22:54 AM Sen. Simpson
9:23:06 AM Sen. Joyner
9:23:25 AM Sen. Benacquisto
9:23:38 AM Am. 331712
9:23:47 AM Sen. Bradley
9:24:48 AM Sen. Lee
9:25:17 AM Sen. Bradley
9:25:39 AM Sen. Benacquisto
9:25:44 AM Sen. Lee
9:26:07 AM Sen. Bradley
9:26:21 AM Sen. Benacquisto
9:26:47 AM Am. 725694
9:26:54 AM Sen. Simpson
9:27:04 AM Sen. Lee
9:27:33 AM Sen. Simpson
9:29:21 AM Sen. Benacquisto
9:29:31 AM
9:29:32 AM S 746
9:29:35 AM Sen. Sobel
9:29:58 AM Sen. Benacquisto
9:30:06 AM Sen. Margolis
9:30:42 AM Sen. Sobel
9:30:58 AM Sen. Benacquisto
9:31:08 AM Chris Nuland, Florida Society of Plastic Surgeons (waives in support)
9:32:08 AM Sen. Benacquisto
9:32:14 AM
9:32:15 AM S 734
9:32:20 AM Sen. Sobel
9:32:28 AM PCS 951274
9:32:56 AM Sen. Benacquisto
9:33:51 AM
9:33:52 AM S 518
9:33:58 AM Sen. Benacquisto
9:33:59 AM Sen. Flores
9:34:02 AM PCS 790730
9:34:22 AM Am. 272422
9:34:58 AM Sen. Latvala
9:35:09 AM Sen. Flores
9:35:10 AM S 518 (cont.)
9:35:13 AM Jim Millican, Executive Chair, Suncoast Safe Kids (waives in support)
9:35:39 AM Mary-Lynn Cullen, Legislative Liaison, Advocacy Institute for Children (waives in support)
9:36:24 AM Lee Moffitt, Attorney at Law, AAA Auto Clubs (waives in support)
9:36:35 AM Chris Nuland, Florida Public Health Association (waives in support)
9:36:39 AM Eric Choy, Government Markets Consultant, Junior League of Florida (waives in support)
9:36:46 AM Sen. Latvala
9:37:00 AM Sen. Benacquisto
9:37:55 AM
9:37:56 AM S 364
9:38:00 AM Sen. Brandes
9:38:03 AM PCS 411272
9:38:49 AM Sen. Benacquisto
9:38:55 AM Am. 812390
9:39:02 AM Sen. Galvano
9:39:31 AM Sen. Benacquisto
9:39:39 AM Am. 893236
9:39:45 AM Sen. Hays

9:39:52 AM Sen. Brandes
9:39:56 AM Sen. Benacquisto
9:40:06 AM Am. 688956
9:40:17 AM Sen. Brandes
9:40:32 AM Am. 115286
9:40:37 AM Sen. Brandes
9:40:55 AM S 364 (cont.)
9:41:06 AM Gail Marie Perry, Chair Council of Florida, Communication Workers of America
9:42:40 AM Sen. Joyner
9:43:25 AM Sen. Brandes
9:44:00 AM Sen. Joyner
9:44:19 AM Sen. Brandes
9:44:23 AM Sen. Joyner
9:45:04 AM Sen. Brandes
9:46:16 AM Sen. Benacquisto
9:47:17 AM
9:47:18 AM S 510
9:47:22 AM Sen. Ring
9:47:26 AM PCS 207354
9:48:12 AM Sen. Benacquisto
9:48:20 AM Yolanda Jackson, Government Relations Consultant, City of Lauderhill (waives in support)
9:48:26 AM Troy Price, Public Policy Representative, Florida Realtors (waives in support)
9:48:31 AM Brian Pitts, Trustee, Justice-2-Jesus
9:50:47 AM Sen. Smith
9:50:59 AM B. Pitts
9:51:06 AM Sen. Smith
9:51:13 AM B. Pitts
9:51:28 AM Sen. Smith
9:51:40 AM B. Pitts
9:52:09 AM Sen. Benacquisto
9:53:07 AM
9:53:08 AM S 886
9:53:16 AM Sen. Montford
9:53:51 AM Sen. Benacquisto
9:53:57 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
9:54:53 AM
9:54:54 AM S 1206
9:54:59 AM Sen. Montford
9:55:43 AM Sen. Benacquisto
9:55:50 AM Adam Basford, Legislative Affairs Director, Florida Farm Bureau (waives in support)
9:55:57 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
9:56:55 AM
9:56:56 AM S 798
9:57:01 AM Sen. Ring
9:57:42 AM Am. 949318
9:57:51 AM Sen. Ring
9:58:13 AM Sen. Sobel
9:58:20 AM Sen. Ring
9:59:08 AM Sen. Joyner
9:59:54 AM Alice Vickers, Attorney, Florida Alliance for Consumer Protection (waives in support)
10:00:11 AM Am. 775078
10:00:13 AM Sen. Ring
10:00:30 AM Am. 582410
10:00:46 AM Am. 929482
10:00:54 AM Sen. Ring
10:01:07 AM Sen. Benacquisto
10:01:18 AM S 798 (cont.)
10:01:22 AM Travis Moore, Community Associations Institute (waives in support)
10:01:28 AM Diana Ferguson, Attorney, Community Advocate Network (waives in support)
10:02:21 AM
10:02:22 AM S 972
10:02:26 AM Sen. Galvano

10:02:49 AM Am. 670178
10:02:58 AM Am. 388572
10:02:59 AM Sen. Galvano
10:03:13 AM Sen. Benacquisto
10:03:23 AM S 972 (cont.)
10:03:38 AM Steve Merz, Florida Bar (waives in support)
10:03:43 AM Christina Spudeas, Executive Director, Florida's Children First (waives in support)
10:03:51 AM Alan Abramowitz, Executive Director, GAL (waives in support)
10:03:57 AM Brian Pitts, Trustee, Justice-2-Jesus
10:06:18 AM Sen. Benacquisto
10:06:24 AM Sen. Sobel
10:06:28 AM Sen. Benacquisto
10:06:35 AM Sen. Galvano
10:07:08 AM Sen. Benacquisto
10:07:50 AM Sen. Hukill
10:07:58 AM Sen. Benacquisto
10:08:01 AM
10:08:02 AM S 712
10:08:06 AM Sen. Galvano
10:08:22 AM Sen. Benacquisto
10:08:32 AM JC Flores, Regional Director External Affairs, AT&T (waives in support)
10:08:37 AM Diana Ferguson, Attorney, T-Mobile (waives in support)
10:08:41 AM Woody Simmons, Vice President Government Affairs, Verizon Communications
10:08:49 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
10:08:52 AM Jorge Chamizo, Attorney, TracFone Wireless (waives in support)
10:08:55 AM Doug Manheimer, Attorney, Sprint (waives in support)
10:08:59 AM Brian Pitts, Trustee, Justice-2-Jesus
10:10:26 AM Sen. Benacquisto
10:11:08 AM
10:11:09 AM S 876
10:11:15 AM Sen. Galvano
10:11:36 AM Sen. Benacquisto
10:11:42 AM Tom Tatum, Sergeant, Florida Sheriff's Association (waives in support)
10:11:47 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in opposition)
10:12:32 AM Sen. Benacquisto
10:12:45 AM
10:12:46 AM S 1044 (cont.)
10:13:15 AM Sen. Bradley
10:13:17 AM Am. 810258
10:14:01 AM Am. 331712
10:15:02 AM Sen. Bradley
10:15:35 AM Sen. Simpson
10:15:49 AM Sen. Benacquisto
10:15:55 AM Am. 725694
10:16:02 AM Sen. Simpson
10:16:26 AM Sen. Joyner
10:17:27 AM Sen. Simpson
10:17:39 AM Kari Hebrank, Florida Home Builders
10:18:31 AM Sen. Joyner
10:18:44 AM K. Hebrank
10:19:28 AM Sen. Sobel
10:19:31 AM K. Hebrank
10:19:39 AM Lee Moffitt, Attorney, Building Owners and Managers Association
10:20:23 AM Robert Stuart, Government Consultant, Aquadl Design Engineering (waives in support)
10:20:30 AM Bruce Kershner, United Pool and Spa Association (waives in support)
10:20:35 AM Eddie Labrador, Director Intergovernmental Affairs, Broward County (waives in support)
10:20:50 AM Sen. Sobel
10:21:09 AM S 1044 (cont.)
10:21:14 AM David Cullen, Sierra Club Florida (waives in opposition)
10:21:20 AM Brian Pitts, Trustee, Justice-2-Jesus
10:23:10 AM Susan Glickman, Florida Director, Southern Alliance for Clean Energy
10:28:15 AM Sen. Sobel

10:29:06 AM S. Glickman
10:29:15 AM Sen. Bean
10:29:31 AM Sen. Hukill
10:29:53 AM Sen. Bean
10:29:56 AM Sen. Lee
10:31:36 AM Sen. Bean
10:32:47 AM Sen. Bradley
10:33:02 AM Sen. Thrasher
10:33:16 AM Sen. Richter
10:33:24 AM Sen. Bean
10:33:36 AM Sen. Negron
10:33:46 AM Sen. Bean