

<b>Tab 2</b>	<b>SB 486</b> by <b>Brodeur</b> ; (Similar to CS/H 00273) Money Services Businesses						
635244	A	S	RCS	AEG, Brodeur	Delete L.135 - 138:	01/26 05:01 PM	

<b>Tab 3</b>	<b>SB 606</b> by <b>Garcia</b> ; (Identical to H 00493) Boating Safety						
960338	A	S	RCS	AEG, Garcia	Delete L.73 - 537:	01/26 05:01 PM	

<b>Tab 4</b>	<b>SB 832</b> by <b>Stewart (CO-INTRODUCERS) Rodrigues</b> ; (Identical to H 00561) Implementation of the Recommendations of the Blue-Green Algae Task Force						
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<b>Tab 5</b>	<b>SB 922</b> by <b>Perry (CO-INTRODUCERS) Ausley</b> ; (Identical to H 00597) Florida Young Farmer and Rancher Matching Grant Program						
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<b>Tab 6</b>	<b>SB 1274</b> by <b>Broxson</b> ; (Identical to H 01123) Ratification of Rules of the Department of Financial Services						
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<b>Tab 7</b>	<b>SB 1400</b> by <b>Burgess</b> ; (Similar to H 00603) Land Acquisition Trust Fund						
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<b>Tab 8</b>	<b>SB 1402</b> by <b>Burgess</b> ; (Compare to H 00951) Domestic Surplus Lines Insurance						
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS SUBCOMMITTEE ON AGRICULTURE,  
ENVIRONMENT, AND GENERAL GOVERNMENT**

**Senator Albritton, Chair**  
**Senator Rodrigues, Vice Chair**

**MEETING DATE:** Wednesday, January 26, 2022  
**TIME:** 3:30—5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Albritton, Chair; Senator Rodrigues, Vice Chair; Senators Ausley, Berman, Boyd, Bradley, Brodeur, Garcia, Mayfield, and Stewart

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<p><b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.</p> <p><b>Executive Director of St. Johns River Water Management District</b></p>			
1	Register, Michael (Seville)	Pleasure of the Board	Recommend Confirm Yeas 10 Nays 0
TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	<b>SB 486</b> Brodeur (Similar CS/H 273)	Money Services Businesses; Revising exceptions to general laws and rules for licensees during the Financial Technology Sandbox period; defining the term "virtual currency"; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising criminal and civil penalties for certain violations relating to unlicensed activity involving money services businesses and deferred presentment providers; requiring money transmitters that receive virtual currency for specified purposes to hold a certain type and amount of virtual currency until the transmission obligation is completed, etc.	Fav/CS Yeas 10 Nays 0
		BI 01/12/2022 Favorable AEG 01/26/2022 Fav/CS AP	
3	<b>SB 606</b> Garcia (Identical H 493)	Boating Safety; Citing this act as the "Boating Safety Act of 2022"; authorizing a court to impose a specified fine for certain boating collisions and accidents; prohibiting liveries, beginning on a specified date, from offering a vessel for lease or rent without a livery permit; revising the conditions under which a livery may not knowingly lease or rent a vessel; increasing fines for violations of certain boating regulations; providing that an improper transfer of vessel title is subject to a civil penalty, etc.	Fav/CS Yeas 10 Nays 0
		EN 11/30/2021 Favorable AEG 01/26/2022 Fav/CS AP	

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on Agriculture, Environment, and General Government  
Wednesday, January 26, 2022, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 832</b> Stewart (Identical H 561)	Implementation of the Recommendations of the Blue-Green Algae Task Force; Requiring owners of certain onsite sewage treatment and disposal systems to have the systems periodically inspected, beginning on a specified date; requiring the Department of Environmental Protection to administer the inspection program; requiring new or revised basin management action plans to include a list that identifies and prioritizes certain spatially focused projects, etc.  EN 01/10/2022 Favorable AEG 01/26/2022 Favorable AP	Favorable Yeas 10 Nays 0
5	<b>SB 922</b> Perry (Identical H 597)	Florida Young Farmer and Rancher Matching Grant Program; Creating the program within the Department of Agriculture and Consumer Services; requiring the department to select grant recipients based on specified criteria; providing that a recipient may not receive more than one award per year under the program; specifying that grant funding is contingent upon specific annual appropriation by the Legislature, etc.  AG 01/13/2022 Favorable AEG 01/26/2022 Favorable AP	Favorable Yeas 10 Nays 0
6	<b>SB 1274</b> Broxson (Identical H 1123)	Ratification of Rules of the Department of Financial Services; Ratifying a specified rule relating to the Florida Workers' Compensation Health Care Provider Reimbursement Manual, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc.  BI 01/18/2022 Favorable AEG 01/26/2022 Favorable AP	Favorable Yeas 10 Nays 0
7	<b>SB 1400</b> Burgess (Similar H 603)	Land Acquisition Trust Fund; Providing an annual appropriation to the Department of Environmental Protection to implement the Heartland Headwaters Protection and Sustainability Act; requiring the funds to be used and distributed for specified purposes, etc.  EN 01/18/2022 Favorable AEG 01/26/2022 Favorable AP	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Agriculture, Environment, and General Government  
Wednesday, January 26, 2022, 3:30—5:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1402</b> Burgess (Compare H 951)	Domestic Surplus Lines Insurance; Defining the term "domestic surplus lines insurer"; providing for the eligibility of domestic surplus lines insurers; subjecting and exempting surplus lines insurers and surplus lines policies from certain requirements, etc.  BI 01/18/2022 Favorable AEG 01/26/2022 Favorable AP	Favorable Yeas 10 Nays 0

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Other Related Meeting Documents

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# St. Johns River Water Management District

Michael A. Register, P.E., Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • 386-329-4500 • www.sjrwmd.com

November 9, 2021

Office of Governor Ron DeSantis  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

Dear Governor DeSantis,

It is my pleasure to inform you that the Governing Board of the St. Johns River Water Management District (District) appointed Michael Register, P.E., to the position of Executive Director on September 14, 2021, pursuant to section 373.073(4)(a), Florida Statutes.

Mr. Register has served the District since 1990 and has worked in a variety of areas. I am confident he will continue the District's successful work on behalf of Florida's water and natural resources.

Sincerely,

Douglas Burnett  
Chair

cc: Laurel M. Lee, Secretary of State  
R.A. Gray Building  
500 S. Bronough St.  
Tallahassee, FL 32399-0250

RECEIVED  
THE DEPARTMENT OF STATE

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DIVISION OF ELECTIONS  
TALLAHASSEE, FL

**GOVERNING BOARD**

Douglas Burnett, CHAIRMAN  
ST. AUGUSTINE

Doug Bournique

Rob Bradley, VICE CHAIRMAN  
FLEMING ISLAND

Maryam Ghyabi-White

Ron Howse, TREASURER  
COCCA

Cole Oliver

Ryan Atwood  
MOUNT DORA

J. Chris Peterson

Janet Price

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

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DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of Putnam

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Executive Director, St. Johns River Water Management District

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

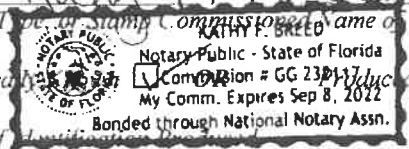
[Signature]  
Signature

Sworn to and subscribed before me by means of  physical presence or  
 online notarization, this 11<sup>th</sup> day of September, 2021.

[Signature]  
Signature of Officer Administering Oath or of Notary Public

Kathy F. Bledsoe  
Print, Type or Stamp Commissioner's Name of Notary Public

Personally   Public Identification   
Type of Identification



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

4049 Reid Street  
Street or Post Office Box  
Palatka, FL 32177  
City, State, Zip Code

Michael A. Register, P.E.  
Print Name  
[Signature]  
Signature

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Laurel M. Lee, Secretary of State,  
do hereby certify that

***Michael A. Register***

is duly appointed

**Executive Director,  
Saint Johns River Water Management  
District**

for a term beginning on the Fourteenth day of September, A.D.,  
2021, to serve at the pleasure of the District's Governing Board  
and is subject to be confirmed by the Senate during the next  
regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twelfth day of November, A.D., 2021.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/SB 486 (975382)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; and Senator Brodeur

SUBJECT: Money Services Businesses

DATE: January 28, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	<b>Favorable</b>
2.	Sanders	Betta	AEG	<b>Recommend: Fav/CS</b>
3.			AP	

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**I. Summary:**

PCS/SB 486 amends the Money Services Businesses statutes related to virtual currency. The bill:

- Defines virtual currency as a medium of exchange in electronic or digital format that is not currency;
- Subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and
- Prohibits payment instrument sellers from transacting business involving virtual currency.

The bill makes additional revisions to definitions and conforming changes.

The bill has an indeterminate impact to state funds or expenditures. (*See section V. Fiscal Impact below.*)

The bill takes effect January 1, 2023.

**II. Present Situation:**

**Regulation of Money Transmitters and Payment Instrument Sellers**

***State Regulation***

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>1</sup> The Division of Consumer Finance within the OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money

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<sup>1</sup> Section 20.121(3)(a)2., F.S.



transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,<sup>2</sup> monetary value,<sup>3</sup> or payment instruments<sup>4</sup> for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.<sup>5</sup> A payment instrument seller sells, issues, provides, or delivers a payment instrument.<sup>6</sup> State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.<sup>7</sup> Currently, virtual currency is not *expressly* within ch. 560, F.S., though in the last seven years the OFR has received over 70 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.<sup>8</sup>

An applicant for a MSB license under ch. 560, F.S., must file an application with the OFR and pay an application fee of \$375.<sup>9</sup> The license must be renewed every two years by paying a renewal fee of \$750.<sup>10</sup> Money transmitters and payment instrument sellers may operate through authorized vendors by providing the OFR with specified information about the authorized vendor and by paying a fee of \$38 per authorized vendor location at the time of application and renewal.<sup>11</sup> A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers<sup>12</sup> and foreign currency exchangers<sup>13</sup> without paying additional licensing fees.<sup>14</sup>

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<sup>2</sup> The term “currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. Section 560.103(11), F.S.

<sup>3</sup> The term “monetary value” means a medium of exchange, whether or not redeemable in currency. Section 560.103(21), F.S.

<sup>4</sup> The term “payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. Section 560.103(29), F.S.

<sup>5</sup> Section 560.103(23), F.S.

<sup>6</sup> Section 560.103(30) and (34), F.S.; definition of “payment instrument,” *supra* note 4.

<sup>7</sup> Section 560.104, F.S.

<sup>8</sup> See Florida House, *HB 1351 (2021) Bill Analysis*,

<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1351.IBS.DOCX&DocumentType=Analysis&BillNumber=1351&Session=2021> (last visited Jan. 10, 2021), and Florida House, *Meeting of the Subcommittee on Insurance and Banking* (Feb. 3, 2021) (statement of Russell Weigel, Commissioner, Florida Office of Financial Regulation). Declaratory statements can be found by accessing Florida Division of Administrative Hearings at <https://www.doah.state.fl.us/FLAIO/>.

<sup>9</sup> Sections 560.141 and 560.143, F.S.

<sup>10</sup> *Id.*; s. 560.142, F.S.

<sup>11</sup> *Id.*; ss. 560.203, 560.205, and 560.208, F.S.

<sup>12</sup> The term “check casher” means a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.103(6), F.S.

<sup>13</sup> The term “foreign currency exchanger” means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. Section 560.103(17), F.S.

<sup>14</sup> Section 560.204(2), F.S.

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least \$100,000 and an additional net worth of \$10,000 per location in this state, up to a maximum of \$2 million.<sup>15</sup>
- Have a corporate surety bond in an amount between \$50,000 and \$2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.<sup>16</sup> In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.<sup>17</sup>
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.<sup>18</sup> The OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.<sup>19</sup>

While MSBs are generally subject to federal anti-money laundering laws,<sup>20</sup> Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.<sup>21</sup>

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.<sup>22</sup> An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.<sup>23</sup> The OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.<sup>24</sup> The OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.<sup>25</sup>

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:<sup>26</sup>

- A daily record of payment instruments sold and money transmitted;

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<sup>15</sup> Section 560.209, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 560.210, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> 31 C.F.R. pt. 1022.

<sup>21</sup> Section 560.1401, F.S.

<sup>22</sup> Section 560.123, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 560.114, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Sections 560.1105 and 560.211, F.S.

- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly;
- Daily settlement records received from authorized vendors;
- Monthly financial institution statements and reconciliation records;
- Records of outstanding payment instruments and money transmitted;
- Records of each payment instrument paid and money transmission delivered;
- A list of the names and addresses of the licensee's authorized vendors;
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates; and
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

***Recent Case Law: State v. Espinoza***

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza (defendant), in order to purchase bitcoin.<sup>27</sup> The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.<sup>28</sup> The detective paid Mr. Espinoza \$500 in cash and received a portion of a bitcoin valued at \$416.12, thus earning Mr. Espinoza a profit of \$83.67.<sup>29</sup>
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.<sup>30</sup> The detective paid Mr. Espinoza \$1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately \$167.56.<sup>31</sup>
- The detective then arranged a third transaction with Mr. Espinoza.<sup>32</sup> The detective inquired how fast the transaction could be completed because his "Russian buddies" would not send him his "[stuff] until they get the coin."<sup>33</sup> The detective deposited \$500 into Mr. Espinoza's bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.<sup>34</sup>
- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth \$30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.<sup>35</sup> Although Mr. Espinoza questioned the authenticity of the \$30,000 roll of money that the detective gave him, he otherwise remained

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<sup>27</sup> *State v. Espinoza*, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).

<sup>28</sup> *Id.* at 1060.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 1060-61.

ready and willing to consummate the entire transaction.<sup>36</sup> Mr. Espinoza was then taken into custody.<sup>37</sup>

Mr. Espinoza was charged with: one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (count one); and two counts of money laundering (counts two and three).<sup>38</sup>

Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to count one, the trial court found that neither bitcoin nor Mr. Espinoza's conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.<sup>39</sup> Regarding Mr. Espinoza's conduct, the trial court reasoned that a "money transmitter" would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.<sup>40</sup> Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return; and
- As to counts two and three, the trial court found that the conduct at issue qualifies as a "financial transaction" under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.<sup>41</sup>

The state then appealed the trial court's dismissal of the information.<sup>42</sup> On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business;<sup>43</sup> and
- The trial court erred in dismissing counts two and three on the basis that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.<sup>44</sup>

In the reasoning as to count one, the court determined that bitcoin is both "monetary value" and a "payment instrument" under ch. 560, F.S.<sup>45</sup> This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court's interpretation also illustrates the need to clarify the definition of "payment instrument." "Monetary value" is akin to "currency" within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

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<sup>36</sup> *Id.* at 1061.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1057 and 1061.

<sup>39</sup> *Id.* at 1057 and 1061.

<sup>40</sup> *Id.* at 1065.

<sup>41</sup> *Id.* at 1057 and 1061.

<sup>42</sup> *Id.* at 1061.

<sup>43</sup> *Id.* at 1057 and 1061-62.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 1064.

Another important aspect of the *Espinoza* case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of “money transmitter” covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.<sup>46</sup> On this point, the court held that “[t]he statute’s plain language clearly contains no third party transmission requirement in order for an individual’s conduct to fall under the ‘money transmitter’ definition. As such, we decline to add any third party or ‘middleman’ requirement to the money transmitter definition found in section 560.103(23).”<sup>47</sup> The court’s holding illustrates the need to clarify the definition of “money transmitter” such that a money transmitter license is only required for a person acting as an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.<sup>48</sup>

### ***Virtual Currency***

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.<sup>49</sup> In some environments, it operates like “real” currency<sup>50</sup> (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.<sup>51</sup> Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency.<sup>52</sup> Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.<sup>53</sup>

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).<sup>54</sup> To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.<sup>55</sup> Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.<sup>56</sup> Ledger entries are cryptographically secured,

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<sup>46</sup> *Id.* at 1065.

<sup>47</sup> *Id.* (citations omitted).

<sup>48</sup> This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.

<sup>49</sup> IRS, *Virtual Currencies: What is virtual currency?*, <https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies> (last visited Dec. 29, 2021).

<sup>50</sup> Also often referred to as “fiat” currency.

<sup>51</sup> IRS, *supra* note 48.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, <https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf> (last visited Dec. 29, 2021).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

and accounts are identified on a blockchain by alphanumeric “public keys”—not by the owner’s name.<sup>57</sup>

Some persons use the services of a third-party to acquire or transact in virtual currency.<sup>58</sup> For example, certain third-parties provide custody services for their customers’ virtual currency in so called “hosted wallets.”<sup>59</sup> In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.<sup>60</sup> Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.<sup>61</sup> Such persons may store the private key in a software program or written record, often referred to as an “unhosted wallet.”<sup>62</sup>

Virtual currency networks present opportunities as well as risks.<sup>63</sup> The G7 Finance Ministers and Central Bank Governors<sup>64</sup> recently noted that “[t]he widespread adoption of digital payments...has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.”<sup>65</sup> At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.<sup>66</sup>

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.<sup>67</sup> One industry estimate is approximately one percent of overall market transaction volume, or \$10 billion, in virtual currency activity conducted globally in 2019 was illicit.<sup>68</sup> This figure, however, may underestimate such illicit activity.<sup>69</sup> Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, the U.S. Financial Crime Enforcement Network (FinCEN)<sup>70</sup> received approximately \$119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> The G7 comprises the United Kingdom, the United States of America, Canada, Japan, Germany, and Italy plus the European Union. The G7 Finance Ministers are jointly led by Chancellor of the Exchequer, Rishi Sunak and Governor of the Bank of England, Andrew Bailey. See *G7, What is the G7*, <https://www.g7uk.org/what-is-the-g7/> and *G7, Finance Ministers*, <https://www.g7uk.org/finance-ministers/> (last visited Jan. 18, 2022).

<sup>65</sup> *Id.* (citing the G7 Finance Ministers and Central Bank Governors’ Statement on Digital Payments on Oct. 13, 2020).

<sup>66</sup> FinCEN Notice of Proposed Rulemaking, *supra* note 53.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), <https://go.chainalysis.com/2020-CryptoCrime-Report.html>).

<sup>69</sup> FinCEN Notice of Proposed Rulemaking, *supra* note 53.

<sup>70</sup> The mission of the U.S. Financial Crime Enforcement Network (FinCEN) is to safeguard the financial system from illicit use, combat money laundering and its related crimes, including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis and dissemination of financial intelligence. FinCEN, *Mission*, <https://www.g7uk.org/what-is-the-g7/> (last visited Jan. 18, 2022).

part in the United States.<sup>71</sup> By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.<sup>72</sup>

### ***Virtual Currency in Florida Statutes***

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act (act).<sup>73</sup> Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, “virtual currency” means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.”<sup>74</sup> This definition was added in 2017<sup>75</sup> and is the only instance of “virtual currency” in Florida Statutes.

### ***Federal Regulation of MSBs***

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation’s financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.<sup>76</sup> The basic concept underlying FinCEN’s core activities is “follow the money” because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.<sup>77</sup> To that end, FinCEN administers the Bank Secrecy Act (BSA).<sup>78</sup> BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.<sup>79</sup> BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.<sup>80</sup>

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than \$1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler’s checks, check cashing, currency dealing, or exchange.<sup>81</sup> However, an MSB must register with FinCEN if it provides money transfer services in any amount.<sup>82</sup>

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<sup>71</sup> *Id.* FinCEN notes that a significant majority of this \$119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious.

<sup>72</sup> *Id.* Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit.

<sup>73</sup> Section 896.101, F.S.

<sup>74</sup> *Id.*

<sup>75</sup> Chapter 2017-155, Laws of Fla.

<sup>76</sup> FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do> (last visited Jan. 19, 2021).

<sup>77</sup> *Id.*

<sup>78</sup> Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.

<sup>79</sup> FinCEN, *supra* note 73.

<sup>80</sup> *Id.*

<sup>81</sup> 31 C.F.R. §§ 1010.100 and 1022.380.

<sup>82</sup> *Id.*

BSA regulations define “money transmission services” as “the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means.”<sup>83</sup> Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN’s BSA regulations.<sup>84</sup>

Federal law criminalizes money transmission if the money transmitting business:<sup>85</sup>

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

### **Financial Technology Sandbox**

In 2020, the Legislature created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible, regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.<sup>86</sup>

Currently, Financial Technology Sandbox licensees are exempt from the licensing requirements for payment instrument sellers and money transmitters under s. 560.204(1), F.S., only to the extent that the requirements would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the 24-month<sup>87</sup> sandbox period.<sup>88</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 559.952, F.S., related to licensing exceptions for payment instrument sellers under the Financial Technology Sandbox, to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S., (Section 5 of the bill).

**Section 2** amends s. 560.103, F.S., to create a definition for “virtual currency” and amend multiple other definitions in the section. The definitions are revised in order to subject money transmitters to licensing requirements for transactions involving a virtual currency, and prohibit payment instrument sellers from selling, issuing, providing, or delivering virtual currency.

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<sup>83</sup> 31 C.F.R. § 1010.100 (emphasis added).

<sup>84</sup> FinCEN Guidance, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf> (last visited December 29, 2021); FinCEN Notice of Proposed Rulemaking, *supra* note 53.

<sup>85</sup> 31 U.S.C. § 1960.

<sup>86</sup> See s. 559.952, F.S.

<sup>87</sup> Section 559.952(3)(k), F.S.

<sup>88</sup> Section 559.952(4)(11), F.S.



New subsection (36) defines “virtual currency” to mean a medium of exchange in electronic or digital format which is not currency as defined in subsection (11). “Currency” is the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. The term “virtual currency” does not include a medium of exchange in electronic or digital format which is:

- Issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or
- Used exclusively as part of a consumer affinity or rewards program and which can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The bill revises definitions of the following terms as follows:

- “Electronic instrument” by inserting a reference to currency and deleting a reference to “money,” which is not defined in the chapter.
- “Monetary value” to mean a medium of exchange other than virtual currency. Accordingly, references to monetary value exclude virtual currency.
- “Money transmitter” by inserting references to payment instrument, virtual currency, currency, monetary value, and payment instruments and inserting a third-party transmission requirement. The added reference to virtual currency, subjects a money transmitter to licensing requirements for transactions involving a virtual currency.
- “Payment instrument” by inserting references to methods of transmission and exchange and inserting a reference to currency in addition to the existing reference to “monetary value.” This revision, paired with the other revisions to definitions in this section, has the effect of prohibiting payment instrument sellers from selling, issuing, providing, or delivering virtual currency.
- “Stored value” by inserting references to currency.

**Section 3** amends s. 560.123, F.S., related to Florida Control of Money Laundering in Money Services Business Act, to conform with changes made to definitions in Section 2, and to changes made to required recordkeeping in Section 9, of the bill. This has the effect of applying the statute to specified virtual currency transactions.

**Section 4** amends s. 560.125, F.S., related to penalties for unlicensed activity, to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S., (Section 5 of the bill), thus applying the penalties to unlicensed activity involving virtual currency.

**Section 5** amends s. 560.204, F.S., related to licensing requirements, to revise the definition of “compensation” by inserting references to monetary value and virtual currency. This has the effect of requiring licensure as a money transmitter to receive compensation related to the exchange of virtual currency.

**Section 6** amends s. 560.208, F.S., to conform with changes made to the licensing requirement statute in s. 560.204, F.S. (Section 5 of the bill). With regard to the transmission of virtual currency, this requires that the transmitted virtual currency is available to the designated

recipient within 10 business days after receipt, and that immediately upon the receipt of virtual currency, the customer must be provided a confirmation or sequence number.

**Section 7** amends s. 560.2085, F.S., to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S. (Section 5 of the bill). This has the effect of applying to money transmitters of virtual currency the statute's requirements related to the contracts between the licensee and authorized vendors.

**Section 8** amends s. 560.210, F.S., related to permissible investments, to require a money transmitter to hold virtual currency in the same type and amount as owed or obligated to the other location of person. The held virtual currency may not be calculated as a permissible investment for purposes of equaling the aggregate face amount of all outstanding money transmission issued by the licensee.

**Section 9** amends s. 560.211, F.S., related to required recordkeeping, to add rulemaking authority of recordkeeping requirements related to payment instruments and virtual currency.

The bill also conforms with changes made to definitions in Section 2.

**Section 10** amends s. 560.212, F.S., related to financial liability for licensees, to conform with changes made to definitions in Section 2 of the bill.

**Section 11** provides an effective date of January 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

**B. Private Sector Impact:**

Section 560.143, F.S., requires the following fees for money services businesses, which will now be applied to money transmitters of virtual currency:

- For initial licensure:
  - Application fee of \$375.
  - Fingerprinting fees, to authorized live scan vendors, that average \$65 per individual with a controlling interest.
  - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.
- Bi-annual renewal fees:
  - \$750 renewal fee
  - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.

Additionally, licensees are required to reimburse the OFR for examination expenses. The average examination fee imposed by the office for Fiscal Year 2019-20 (pre-COVID) was \$3,800. This fee would be imposed on average once every five years.<sup>89</sup>

**C. Government Sector Impact:**

The impact to state funds and expenditures is indeterminate. The Florida Department of Law Enforcement may see an increase in fingerprinting applications and the impact to technology systems is unknown.<sup>90</sup>

The Office of Financial Regulation expects the bill will prompt an increase in money transmitter applications and the amount of increased revenue is unknown at this time.<sup>91</sup> Should new licensees dealing in virtual currency significantly increase, the OFR may need additional staffing.<sup>92</sup>

**VI. Technical Deficiencies:**

None.

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<sup>89</sup> Office of Financial Regulation, *Bill Analysis of SB 468* (Nov. 19, 2021)(on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>90</sup> Florida Department of Law Enforcement, *Bill Analysis of SB 486* (Nov 8, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

**VII. Related Issues:**

The Federal Bureau of Investigation (FBI) has tentatively approved screenings of financial technology sandbox applications for fingerprint-based state and national criminal history record checks under s. 559.952, F.S. If s. 559.952, F.S., is modified, the Florida Department of Law Enforcement (FDLE) may be required to notify the FBI of such change. The FBI will then consider whether the language meets the criteria of federal Public Law 92-544<sup>93</sup> and determine if the Office of Financial Regulation (OFR) is permitted to continue screening financial technology sandbox applicants through state and national criminal history checks.<sup>94</sup>

Upon enactment, there would be greater parity between state and federal law related to the definition of money transmitter as both Florida's definition under s. 560, F.S., and FinCEN's definition of money transmitter, would explicitly include a third-party intermediary and contemplate the use of virtual currency.<sup>95</sup>

Additionally, the bill seeks to impose Bank Secrecy Act (BSA) reporting requirements on virtual currency transactions. Subsection 560.123(3)(c), F.S., provides the timely filing of reports required by 31 U.S.C. s. 5313 (filing currency transaction reports with FinCEN) will satisfy this requirement. FinCEN issued a Notice of proposed rulemaking on December 23, 2020, and on January 15, 2021, reopened the comment period for 15 days for comments on the proposed reporting requirements. To date, FinCEN has not finalized the proposed rules, thereby leaving the reporting guidance unresolved. A challenge could evolve if the bill passes and becomes effective before FinCEN's rules become final and provide a mechanism for BSA reporting of virtual currency transactions.<sup>96</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 559.952, 560.103, 560.123, 560.125, 560.204, 560.208, 560.2085, 560.210, 560.211, and 560.212.

**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 Agriculture, Environment, and General Government on January 26, 2022:**

The committee substitute amends the definition of virtual currency as it relates to excluding mediums of exchange in an electronic or digital format that are used in game platforms.

<sup>93</sup> Public Law 92-544, available at <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1109.pdf#page=7> (last visited Jan. 19, 2022). See also, *FBI, Archives, Testimony, Before the House Financial Services Committee, Dennis Lormel, Section Chief, Financial Crimes Section, Current Enforcement Activities* (March 6, 2001), <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1109.pdf#page=7> (last visited Jan. 19, 2022).

<sup>94</sup> See *supra* note 90, p. 4.

<sup>95</sup> See *supra* note 89, p. 10.

<sup>96</sup> *Id.*

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2022	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Amendment**

Delete lines 135 - 138

and insert:

format which is:

(a) Issued by or on behalf of a publisher and used solely  
within an online game, game platform, or family of games sold by  
the same publisher or offered on the same game platform; or

(b) Used exclusively as part of a consumer affinity or  
rewards

By Senator Brodeur

9-00015A-22

2022486\_\_

1 A bill to be entitled  
 2 An act relating to money services businesses; amending  
 3 s. 559.952, F.S.; revising exceptions to general laws  
 4 and rules for licensees during the Financial  
 5 Technology Sandbox period; amending s. 560.103, F.S.;  
 6 revising definitions; defining the term "virtual  
 7 currency"; amending s. 560.123, F.S.; revising the  
 8 purpose of the Florida Control of Money Laundering in  
 9 Money Services Business Act; revising the duties of  
 10 money services businesses; revising civil and criminal  
 11 penalties; amending s. 560.125, F.S.; revising  
 12 criminal and civil penalties for certain violations  
 13 relating to unlicensed activity involving money  
 14 services businesses and deferred presentment  
 15 providers; amending s. 560.204, F.S.; revising  
 16 provisions related to certain prohibited activities  
 17 without a license or an exemption; revising the  
 18 definition of the term "compensation"; amending s.  
 19 560.208, F.S.; revising requirements for a money  
 20 transmitter or payment instrument seller to conduct  
 21 business; amending s. 560.2085, F.S.; revising  
 22 requirements for written contracts between money  
 23 transmitters or payment instrument sellers and  
 24 authorized vendors; amending s. 560.210, F.S.;  
 25 requiring money transmitters that receive virtual  
 26 currency for specified purposes to hold a certain type  
 27 and amount of virtual currency until the transmission  
 28 obligation is completed; excluding such virtual  
 29 currency in the calculation of permissible

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30 investments; amending s. 560.211, F.S.; revising  
 31 recordkeeping requirements for money transmitters or  
 32 payment instrument sellers; amending s. 560.212, F.S.;  
 33 revising financial liability requirements for money  
 34 transmitters or payment instrument sellers; providing  
 35 an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. Paragraph (a) of subsection (4) of section  
 40 559.952, Florida Statutes, is amended to read:

41 559.952 Financial Technology Sandbox.—

42 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE  
 43 REQUIREMENTS.—

44 (a) Notwithstanding any other law, upon approval of a  
 45 Financial Technology Sandbox application, the following  
 46 provisions and corresponding rule requirements are not  
 47 applicable to the licensee during the sandbox period:

48 1. Section 516.03(1), except for the application fee, the  
 49 investigation fee, the requirement to provide the social  
 50 security numbers of control persons, evidence of liquid assets  
 51 of at least \$25,000, and the office's authority to investigate  
 52 the applicant's background. The office may prorate the license  
 53 renewal fee for an extension granted under subsection (7).

54 2. Section 516.05(1) and (2), except that the office shall  
 55 investigate the applicant's background.

56 3. Section 560.109, only to the extent that the section  
 57 requires the office to examine a licensee at least once every 5  
 58 years.

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- 59 4. Section 560.118(2).
- 60 5. Section 560.125(1), only to the extent that the
- 61 subsection would prohibit a licensee from engaging in the
- 62 business of a money transmitter or payment instrument seller
- 63 during the sandbox period.
- 64 6. Section 560.125(2), only to the extent that the
- 65 subsection would prohibit a licensee from appointing an
- 66 authorized vendor during the sandbox period. Any authorized
- 67 vendor of such a licensee during the sandbox period remains
- 68 liable to the holder or remitter.
- 69 7. Section 560.128.
- 70 8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-
- 71 10. and (b), (c), and (d).
- 72 9. Section 560.142(1) and (2), except that the office may
- 73 prorate, but may not entirely eliminate, the license renewal
- 74 fees in s. 560.143 for an extension granted under subsection
- 75 (7).
- 76 10. Section 560.143(2), only to the extent necessary for
- 77 proration of the renewal fee under subparagraph 9.
- 78 11. Section 560.204(1), only to the extent that the
- 79 subsection would prohibit a licensee from engaging in, or
- 80 advertising that it engages in, ~~the selling or issuing of~~
- 81 ~~payment instruments or in the activity of a payment instrument~~
- 82 seller or money transmitter during the sandbox period.
- 83 12. Section 560.205(2).
- 84 13. Section 560.208(2).
- 85 14. Section 560.209, only to the extent that the office may
- 86 modify, but may not entirely eliminate, the net worth, corporate
- 87 surety bond, and collateral deposit amounts required under that

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- 88 section. The modified amounts must be in such lower amounts that
- 89 the office determines to be commensurate with the factors under
- 90 paragraph (5)(c) and the maximum number of consumers authorized
- 91 to receive the financial product or service under this section.
- 92 Section 2. Subsections (14), (21), (23), (29), and (35) of
- 93 section 560.103, Florida Statutes, are amended, and subsection
- 94 (36) is added to that section, to read:
- 95 560.103 Definitions.—As used in this chapter, the term:
- 96 (14) "Electronic instrument" means a card, tangible object,
- 97 or other form of electronic payment used for the transmission,
- 98 ~~or payment, of money or the exchange of currency or~~ monetary
- 99 value, including a stored value card or device that contains a
- 100 microprocessor chip, magnetic stripe, or other means for storing
- 101 information; that is pruned; and for which the value is
- 102 decremented upon each use.
- 103 (21) "Monetary value" means a medium of exchange, other
- 104 than virtual currency, regardless of whether it is or not
- 105 redeemable in currency.
- 106 (23) "Money transmitter" means a corporation, limited
- 107 liability company, limited liability partnership, or foreign
- 108 entity qualified to do business in this state which receives
- 109 currency, monetary value, ~~a or~~ payment instrument, or virtual
- 110 currency instruments for the purpose of acting as an
- 111 intermediary to transmit currency, monetary value, a payment
- 112 instrument, or virtual currency from one person to another
- 113 location or person transmitting the same by any means, including
- 114 transmission by wire, facsimile, electronic transfer, courier,
- 115 the Internet, or through bill payment services or other
- 116 businesses that facilitate such transfer within this country, or

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117 to or from this country. The term includes only an intermediary  
 118 that has the ability to unilaterally execute or indefinitely  
 119 prevent a transaction.

120 (29) "Payment instrument" means a check, draft, warrant,  
 121 money order, travelers check, electronic instrument, or other  
 122 instrument used for the transmission, exchange, or payment of  
 123 currency ~~money~~, or monetary value, regardless of whether it is  
 124 ~~or not~~ negotiable. The term does not include an instrument that  
 125 is redeemable by the issuer in merchandise or service, a credit  
 126 card voucher, or a letter of credit.

127 (35) "Stored value" means currency funds or monetary value  
 128 represented in digital electronic format, regardless of whether  
 129 it is ~~or not~~ specially encrypted, and stored or capable of  
 130 storage on electronic media in such a way as to be retrievable  
 131 and transferred electronically.

132 (36) "Virtual currency" means a medium of exchange in  
 133 electronic or digital format which is not currency. The term  
 134 does not include a medium of exchange in electronic or digital  
 135 format which is used:

136 (a) Solely within online gaming platforms, with no market  
 137 or application outside those gaming platforms; or

138 (b) Exclusively as part of a consumer affinity or rewards  
 139 program and which can be applied solely as payment for purchases  
 140 with the issuer or other designated merchants, but which cannot  
 141 be converted into or redeemed for currency, monetary value, or  
 142 virtual currency.

143 Section 3. Subsections (2), (3), and (4) and paragraphs  
 144 (b), (c), and (d) of subsection (8) of section 560.123, Florida  
 145 Statutes, are amended to read:

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146 560.123 Florida Control of Money Laundering in Money  
 147 Services Business Act.—

148 (2) The purpose of this section is to require the  
 149 maintenance of certain records of transactions involving  
 150 currency, monetary value, ~~or~~ payment instruments, or virtual  
 151 currency in order to deter the use of a money services business  
 152 to conceal proceeds from criminal activity and to ensure the  
 153 availability of such records for criminal, tax, or regulatory  
 154 investigations or proceedings.

155 (3) A money services business shall keep a record, as  
 156 prescribed by the commission, of each financial transaction  
 157 occurring in this state which it knows to involve currency,  
 158 monetary value, a ~~or other~~ payment instrument, or virtual  
 159 currency as prescribed by the commission, having a value greater  
 160 than \$10,000; to involve the proceeds of specified unlawful  
 161 activity; or to be designed to evade the reporting requirements  
 162 of this section or chapter 896. The money services business must  
 163 maintain appropriate procedures to ensure compliance with this  
 164 section and chapter 896.

165 (a) Multiple financial transactions shall be treated as a  
 166 single transaction if the money services business has knowledge  
 167 that they are made by or on behalf of any one person and result  
 168 in value ~~cash~~ in or value ~~cash~~ out totaling a value of more than  
 169 \$10,000 during any day.

170 (b) A money services business may keep a record of any  
 171 financial transaction occurring in this state, regardless of the  
 172 value, if it suspects that the transaction involves the proceeds  
 173 of unlawful activity.

174 (c) The money services business must file a report with the

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 175 office of any records required by this subsection, at such time  
 176 and containing such information as required by rule. The timely  
 177 filing of the report required by 31 U.S.C. s. 5313 with the  
 178 appropriate federal agency shall be deemed compliance with the  
 179 reporting requirements of this subsection unless the reports are  
 180 not regularly and comprehensively transmitted by the federal  
 181 agency to the office.

182 (d) A money services business, or officer, employee, or  
 183 agent thereof, that files a report in good faith pursuant to  
 184 this section is not liable to any person for loss or damage  
 185 caused in whole or in part by the making, filing, or  
 186 governmental use of the report, or any information contained  
 187 therein.

188 (4) A money services business must comply with the money  
 189 laundering, enforcement, and reporting provisions of s. 655.50  
 190 relating to reports of transactions involving currency  
 191 transactions and payment instruments, as applicable, and of  
 192 chapter 896 concerning offenses relating to financial  
 193 transactions.

194 (8)

195 (b) A person who willfully violates any provision of this  
 196 section, if the violation involves:

197 1. Currency, monetary value, or payment instruments, or  
 198 virtual currency of a value exceeding \$300 but less than \$20,000  
 199 in any 12-month period, commits a felony of the third degree,  
 200 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

201 2. Currency, monetary value, or payment instruments, or  
 202 virtual currency of a value totaling or exceeding \$20,000 but  
 203 less than \$100,000 in any 12-month period, commits a felony of

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 204 the second degree, punishable as provided in s. 775.082, s.  
 205 775.083, or s. 775.084.

206 3. Currency, monetary value, or payment instruments, or  
 207 virtual currency of a value totaling or exceeding \$100,000 in  
 208 any 12-month period, commits a felony of the first degree,  
 209 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

210 (c) In addition to the penalties authorized by s. 775.082,  
 211 s. 775.083, or s. 775.084, a person who has been convicted of,  
 212 or entered a plea of guilty or nolo contendere, regardless of  
 213 adjudication, to having violated paragraph (b) may be sentenced  
 214 to pay a fine of up to the greater of \$250,000 or twice the  
 215 value of the currency, monetary value, or payment instruments,  
 216 or virtual currency whichever is greater, except that on a  
 217 second or subsequent conviction for or plea of guilty or nolo  
 218 contendere, regardless of adjudication, to a violation of  
 219 paragraph (b), the fine may be up to the greater of \$500,000 or  
 220 quintuple the value of the currency, monetary value, or payment  
 221 instruments, or virtual currency whichever is greater.

222 (d) A person who violates this section is also liable for a  
 223 civil penalty of up to ~~not more than~~ the greater of the value of  
 224 the currency, monetary value, or payment instruments, or virtual  
 225 currency involved or \$25,000.

226 Section 4. Subsections (5), (6), and (7) of section  
 227 560.125, Florida Statutes, are amended to read:

228 560.125 Unlicensed activity; penalties.—

229 (5) A person who violates this section, if the violation  
 230 involves:

231 (a) Currency, monetary value, or payment instruments, or  
 232 virtual currency of a value exceeding \$300 but less than \$20,000

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233 in any 12-month period, commits a felony of the third degree,  
234 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

235 (b) Currency, monetary value, or ~~payment instruments, or~~  
236 virtual currency of a value totaling or exceeding \$20,000 but  
237 less than \$100,000 in any 12-month period, commits a felony of  
238 the second degree, punishable as provided in s. 775.082, s.  
239 775.083, or s. 775.084.

240 (c) Currency, monetary value, or ~~payment instruments, or~~  
241 virtual currency of a value totaling or exceeding \$100,000 in  
242 any 12-month period, commits a felony of the first degree,  
243 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

244 (6) In addition to the penalties authorized by s. 775.082,  
245 s. 775.083, or s. 775.084, a person who has been convicted of,  
246 or entered a plea of guilty or nolo contendere to, having  
247 violated this section may be sentenced to pay a fine of up to  
248 the greater of \$250,000 or twice the value of the currency,  
249 monetary value, or virtual currency  
250 ~~whichever is greater~~, except that on a second or subsequent  
251 violation of this section, the fine may be up to the greater of  
252 \$500,000 or quintuple the value of the currency, monetary value,  
253 or payment instruments, or virtual currency ~~whichever is~~  
254 ~~greater~~.

255 (7) A person who violates this section is also liable for a  
256 civil penalty of up to the greater of not more than the value of  
257 the currency, monetary value, or payment instruments, or virtual  
258 currency involved or \$25,000, ~~whichever is greater~~.

259 Section 5. Subsection (1) of section 560.204, Florida  
260 Statutes, is amended to read:

261 560.204 License required.—

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262 (1) Unless exempted, a person may not engage in, or in any  
263 manner advertise that they engage in, ~~the selling or issuing of~~  
264 ~~payment instruments or in the activity of a payment instrument~~  
265 seller or money transmitter, for compensation, without first  
266 obtaining a license under this part. For purposes of this  
267 subsection section, the term "compensation" includes profit or  
268 loss on the exchange of currency, monetary value, or virtual  
269 currency.

270 Section 6. Subsections (5) and (6) of section 560.208,  
271 Florida Statutes, are amended to read:

272 560.208 Conduct of business.—In addition to the  
273 requirements specified in s. 560.1401, a licensee under this  
274 part:

275 (5) Shall, in the normal course of business, ensure that  
276 currency, monetary value, payment instruments, or virtual  
277 currency ~~money~~ transmitted is available to the designated  
278 recipient within 10 business days after receipt.

279 (6) Shall, immediately upon receipt of currency, monetary  
280 value, a or payment instrument, or virtual currency, provide a  
281 confirmation or sequence number to the customer verbally, by  
282 paper, or electronically.

283 Section 7. Paragraph (b) of subsection (2) of section  
284 560.2085, Florida Statutes, is amended to read:

285 560.2085 Authorized vendors.—A licensee under this part  
286 shall:

287 (2) Enter into a written contract, signed by the licensee  
288 and the authorized vendor, which:

289 (b) Includes contract provisions that require the  
290 authorized vendor to:

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291 1. Report to the licensee, immediately upon discovery, the  
292 theft or loss of currency, monetary value, a payment instrument,  
293 or virtual currency received for a transmission or for a payment  
294 instrument sold;

295 2. Display a notice to the public, in such form as  
296 prescribed by rule, that the vendor is the authorized vendor of  
297 the licensee;

298 3. Remit all amounts owed to the licensee for all  
299 transmissions accepted and all payment instruments sold in  
300 accordance with the contract between the licensee and the  
301 authorized vendor;

302 4. Hold in trust all currency, monetary value, ~~or~~ payment  
303 instruments, or virtual currency received for transmissions or  
304 for the purchase of payment instruments from the time of receipt  
305 by the licensee or authorized vendor until the time the  
306 transmission obligation is completed;

307 5. Not commingle the currency, monetary value, payment  
308 instruments, or virtual currency ~~money~~ received for  
309 transmissions accepted or payment instruments sold on behalf of  
310 the licensee with the assets ~~money~~ or property of the authorized  
311 vendor, except for making change in the ordinary course of the  
312 vendor's business; ~~and~~

313 6. Ensure that the currency, monetary value, payment  
314 instruments, or virtual currency received for transmissions  
315 accepted or payment instruments sold ~~money~~ is accounted for at  
316 the end of the business day;

317 7.6- Consent to examination or investigation by the office;

318 8.7- Adhere to the applicable state and federal laws and  
319 rules pertaining to a money services business; and

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320 ~~9.8-~~ Provide such other information or disclosure as may be  
321 required by rule.

322 Section 8. Present subsections (2) and (3) of section  
323 560.210, Florida Statutes, are redesignated as subsections (3)  
324 and (4), respectively, and a new subsection (2) is added to that  
325 section, to read:

326 560.210 Permissible investments.-

327 (2) Each money transmitter that receives virtual currency,  
328 either directly or through an authorized vendor, for the purpose  
329 of transmitting the virtual currency from one person to another  
330 location or person must at all times, until the transmission  
331 obligation is completed, hold virtual currency of the same type  
332 and amount owed or obligated to the other location or person.  
333 Virtual currency received and held under this subsection is not  
334 included in the amount of outstanding money transmissions for  
335 purposes of calculating the permissible investments required by  
336 subsection (1).

337 Section 9. Paragraphs (a), (e), and (f) of subsection (1)  
338 of section 560.211, Florida Statutes, are amended, and paragraph  
339 (j) is added to that subsection, to read:

340 560.211 Required records.-

341 (1) In addition to the record retention requirements under  
342 s. 560.1105, each licensee under this part must make, keep, and  
343 preserve the following books, accounts, records, and documents  
344 for 5 years:

345 (a) A daily record of payment instruments sold and of  
346 currency, monetary value, payment instruments, or virtual  
347 currency ~~money~~ transmitted.

348 (e) Records of outstanding payment instruments and of

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349 currency, monetary value, payment instruments, or virtual  
350 currency ~~money~~ transmitted.

351 (f) Records of each payment instrument paid and of each  
352 currency, monetary value, payment instruments, or virtual  
353 currency ~~money~~ transmission delivered.

354 (j) Any additional records, as prescribed by rule, related  
355 to virtual currency.

356 Section 10. Section 560.212, Florida Statutes, is amended  
357 to read:

358 560.212 Financial liability.—A licensee under this part is  
359 liable for the payment of all currency, monetary value, payment  
360 instruments, or virtual currency ~~money~~ transmitted and payment  
361 instruments that it sells, in whatever form and whether directly  
362 or through an authorized vendor, as the maker, drawer, or  
363 principal thereof, regardless of whether such item is negotiable  
364 or nonnegotiable.

365 Section 11. This act shall take effect January 1, 2023.



## 2022 AGENCY LEGISLATIVE BILL ANALYSIS

### Florida Office of Financial Regulation

#### BILL INFORMATION

<b>BILL NUMBER:</b>	SB 486
<b>BILL TITLE:</b>	Money Services Businesses
<b>BILL SPONSOR:</b>	Sen. Brodeur
<b>EFFECTIVE DATE:</b>	January 1, 2023

#### COMMITTEES OF REFERENCE

1) Banking and Insurance
2) Appropriations Subcommittee on Agriculture, Environment, and General Government
3) Appropriations
4)
5)

#### CURRENT COMMITTEE

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#### SIMILAR BILLS

<b>BILL NUMBER:</b>	HB 273
<b>SPONSOR:</b>	Rep. Aloupis

#### IDENTICAL BILLS

<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

#### PREVIOUS LEGISLATION

<b>BILL NUMBER:</b>	SB 1758
<b>SPONSOR:</b>	Sen. Brandes
<b>YEAR:</b>	2021
<b>LAST ACTION:</b>	Died in Rules

#### **Is this bill part of an agency package?**

Yes

#### BILL ANALYSIS INFORMATION

<b>DATE OF ANALYSIS:</b>	November 19, 2021
<b>LEAD AGENCY ANALYST:</b>	Alexander J. Anderson, Director of Legislative Affairs (850) 410-9601
<b>ADDITIONAL ANALYST(S):</b>	Gregory C. Oaks, Director, Division of Consumer Finance (850) 410-9601
<b>LEGAL ANALYST:</b>	Tony Cammarata, General Counsel (850) 410-9601
<b>FISCAL ANALYST:</b>	Buckley Vernon, Financial Administrator (850) 410-9673

## POLICY ANALYSIS

### 1. EXECUTIVE SUMMARY

Pursuant to chapter 560, F.S., a person must be licensed as a money services business or exempt from licensure to act as a payment instrument seller or money transmitter. The proposed legislation would seek to clarify who must obtain a money services business license when acting as a payment instrument seller or money transmitter.

The proposed legislation would revise definitions relating to electronic instruments, monetary value, money transmitters, and payment instruments.

The proposed legislation would provide a definition for the term “virtual currency.”

The law would revise the duties of certain money services businesses relating to recordkeeping, written contracts involving authorized vendors, the conduct of business, permissible investments, and financial liability.

The law would revise civil and criminal penalties for certain violations of chapter 560, Florida Statutes.

The law would expand the term “compensation” to include profit or loss on the exchange of monetary value or virtual currency.

The law would exclude virtual currency in the calculation of permissible investments.

The law would provide rulemaking authority relating to recordkeeping.

Additionally, the law would make insignificant changes to chapter 559, Part XII, Florida Statutes, relating to exceptions to licensure requirements found in chapter 560, Florida Statutes.

The provisions of the bill would take effect January 1, 2023.

### 2. SUBSTANTIVE BILL ANALYSIS

#### PRESENT SITUATION:

##### Chapter 560, Florida Statutes:

The Office is responsible for the administration and enforcement of chapter 560, Florida Statutes. Pursuant to chapter 560, Florida Statutes, a person must be licensed or exempt from licensure to engage in the activities of a money services business<sup>1</sup>. State and federally chartered financial depository institutions (e.g. banks, credit unions, trust companies, etc.) are exempt from licensure under chapter 560, Florida Statutes.

Under part II of chapter 560, F.S., corporations, limited liability companies, limited liability partnerships, and foreign entities who, for compensation<sup>2</sup>, engage in, or in any manner advertise that they engage in the activities of a “payment instrument seller” or in the activity of a “money transmitter,” must be licensed as a money services business.

##### Payment Instrument Seller:

A “payment instrument seller” sells, issues, provides, or delivers payment instruments<sup>3</sup> (e.g. checks, money orders, stored value card<sup>4</sup>, etc.) for compensation. As the term virtual currency is not mentioned or defined in chapter 560, Florida Statutes, excluded from this definition is the selling, issuing, providing, or delivering of virtual currency.

<sup>1</sup> The term “money services business” means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter. Section 560.103(22), F.S.

<sup>2</sup> The term “compensation” includes profit or loss on the exchange of currency. Section 560.204(1), F.S.

<sup>3</sup> The term “payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. See s. 560.103(29), F.S.

<sup>4</sup> The term “stored value” means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically. See s. 560.103(35), F.S.

**Money Transmitter:**

A “money transmitter” receives currency<sup>5</sup>, monetary value<sup>6</sup>, or payment instruments<sup>7</sup> (e.g. electronic instruments<sup>8</sup>) for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country, for compensation. Because the term virtual currency is not mentioned or defined in chapter 560, Florida Statutes, excluded from this definition is the receipt of virtual currency for the purpose of transmission. Licensure as a money transmitter is required when a third-party intermediary receives currency, monetary value, or payment instruments from a party for the purpose of transmitting currency, monetary value, or payment instruments to another party, for compensation (e.g. Western Union).

**State v. Espinoza, 264 So. 3d 1055 (Fla. 3d DCA 2019):**

While the term virtual currency is not specifically mentioned or defined in chapter 560, Florida Statutes, the Florida Third District Court of Appeal held that Espinoza was acting as both a payment instrument seller and money transmitter which required registration as money services business under Florida Law. In reaching its opinion, the court interpreted the term “monetary value” to contemplate virtual currency and that a money transmitter license is required when a person, whether acting as a third-party intermediary or not, receives cash for the purpose of transmitting monetary value. The court’s judicial interpretation conflicts with the Office’s previous interpretation that the sale of virtual currency was outside the definition of payment instrument seller, and that licensure was not required unless the transaction included a third-party intermediary.

**Requirements of payment instrument seller and money transmitter applicants:**

To qualify as a payment instrument seller or money transmitter, an applicant must:

- (a) Submit an application with the Office and pay a nonrefundable application fee. If the application is approved, the payment instrument seller or money transmitter may, without incurring additional licensing fees, engage in the activities of a check casher or foreign currency exchanger as authorized under part III of chapter 560, Florida Statutes. Additionally, the payment instrument seller or money transmitter may operate through authorized vendors. Authorized vendors acting within the scope of authority conferred by the licensee are exempt from licensure but are otherwise subject to the provisions of chapter 560, Florida Statutes.
- (b) Submit for live-scan processing the fingerprints of those persons who have a controlling interest<sup>9</sup> in the applicant,
- (c) Demonstrate to the Office the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business shall be operated lawfully and fairly;
- (d) Be legally authorized to do business in this state;
- (e) Be registered as a money services business with the Financial Crimes Enforcement Network (FinCEN) as required by 31 C.F.R. s. 1022.380, if applicable.
- (f) Have an anti-money laundering program (“AML”) which meets the requirements of 31 C.F.R. s. 1022.210. The AML program is a licensee’s written program designed to deter money laundering and the financing of terrorist activities by requiring certain record-keeping, reporting, and compliance measures; and
- (g) Have a corporate surety bond in an amount between \$50,000 and \$2 million. In lieu of a corporate surety bond, an applicant may deposit collateral cash, securities, or alternative security devices with a federally insured financial institution.

**Requirements of payment instrument sellers and money transmitters licensees:**

Licensees must at all times maintain a net worth of at least \$100,000 and an additional \$10,000 per location in Florida, up to a maximum of \$2 million.

<sup>5</sup> The term “currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. See s. 560.103(11), F.S.

<sup>6</sup> The term “monetary value” means a medium of exchange, whether or not redeemable in currency. See s. 560.103(21), F.S.

<sup>7</sup> See footnote 3.

<sup>8</sup> The term “electronic instrument” means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use. See s. 560.103(14), F.S.

<sup>9</sup> The term “controlling interest” is defined in s. 560.127, F.S.



Licensees must at all times possess permissible investments (e.g. cash, certificates of deposit, shares in a money market mutual fund, etc.) with an aggregate market value calculated in accordance with generally accepted accounting principles, of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States. The Office may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit posted by the licensee under section 560.209, Florida Statutes.

Pursuant to section 560.123, F.S., "Florida Control of Money Laundering in Money Services Business Act," licensees are required to maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.

Additionally, licensees must keep records of each transaction occurring in Florida which it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of section 560.123 and chapter 896, F.S.

A person found to have willfully violated the "Florida Control of Money Laundering in Money Services Business Act," which involves currency or payment instruments is considered to have committed a felony and is subject to criminal penalties. A person found to be in violation of the Florida Control of Money Laundering in Money Services Business Act is also liable for a civil penalty not more than the greater of the value of the currency or payment instrument involved, or \$25,000. Additionally, a person who has been convicted of, pled guilty or pled nolo contendere to, having violated certain provisions in section 560.123, F.S., may be sentenced to pay a fine of up to \$250,000, or twice the value of the currency or payment instrument involved, and for a second or subsequent conviction, guilty plea or plea of nolo contendere, may be sentenced to pay a fine of up to \$500,000, or quintuple the value of the currency or payment instrument involved, whichever is greater.

**Federal law:**

A money services business must register with FinCEN, as required by 31 C.F.R. s. 1022.380, if applicable. FinCEN is a bureau within the Treasury Department and serves as the Financial Intelligence Unit of the United States. FinCEN oversees and implements policies to prevent and detect money laundering. To this end, FinCEN is responsible for implementing, administering, and enforcing compliance with the Bank Secrecy Act (BSA). The BSA requires financial institutions to assist government agencies in the detection and prevention of money laundering. Specifically, the act requires financial institutions to maintain certain records, file reports of cash transactions exceeding \$10,000, and to report suspicious criminal activity.

Currently, chapter 560, F.S., requires licensees and authorized vendors to comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, section 560.123, and 31 C.F.R. sections 1010.306, 1010.311, 1010.312, 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and 1022.410. In addition, a licensee must comply with the United States Treasury Interpretive Release 2004-1. If such persons fail to comply with the aforementioned provisions, the Office may take administrative action against such persons, including but not limited to, the issuance of a cease and desist or removal order; the denial, suspension, or revocation of a license, and/or the imposition of a fine of at least \$1,000, but not more than \$10,000 for each violation.

**Chapter 559, part XII ("Part XII"), Florida Statutes:**

The Office is responsible for the administration and enforcement of chapter 559, part XII, Florida Statutes. Part XII regulates the financial technology sandbox program. The financial technology sandbox program allows a licensee to make an innovative financial product or service available to consumers during a certain sandbox period.

Currently, financial technology sandbox licensees are excepted from provisions of section 560.204(1), F.S., which prohibits a person from engaging in, or in any manner advertising that they engage in, the sale or issuance of payment instruments, or in the activity of a money transmitter, for compensation, without first obtaining a license under part II of chapter, 560. F.S.

The transmission of virtual currency is currently contemplated in Part XII as section 559.952(3)(f), Florida Statutes, defines "financial product or service" to mean, in part, a product or service related to ... a money transmitter or payment instrument seller, as those terms are defined in s. 560.103, including mediums of exchange that are in electronic or digital form, which is subject to the general laws enumerated in paragraph (4)(a) and corresponding rule requirements and which is under the jurisdiction of the office.

## 1. EFFECT OF THE BILL:

Upon enactment, the law would revise and provide definitions in section 560.103, Florida Statutes, relating to the activities of money transmitters and payment instrument sellers. Such changes would clarify the types of activities requiring licensure as payment instrument sellers and money transmitters.

The law would establish that the sale, issuance, provision, or delivery of virtual currency is excluded from the definition of “payment instrument seller”, and engaging in such activities, or advertising the engagement in such activities, would not require a payment instrument seller license.

### **Definition Changes:**

The proposed legislation would amend the current definition of money transmitter found in s. 560.103(23), Florida Statutes. Upon enactment, the law would expand the definition of money transmitter to include the receipt and transmission of virtual currency; would expressly require a third-party intermediary to receive and transmit currency, monetary value, payment instrument or virtual currency from one person to another location<sup>10</sup> or person; and would expressly allow for the interchange of currency, monetary value, payment instrument or virtual currency during its transmission. The term intermediary will not include intermediaries who are able to unilaterally execute or indefinitely prevent a money transmission transaction.

The proposed legislation would create and define the term “virtual currency.” The term virtual currency would be defined as a medium of exchange in electronic or digital format. Excluded from that definition is the term “currency” as defined in section 560.103, Florida Statutes. Additionally, the definition of virtual currency excludes mediums of exchange in electronic or digital format used within online gaming platforms with no market or application outside such gaming platforms and mediums of exchange in electronic or digital format used as part of consumer affinity or rewards programs to be applied solely as payment for purchases with the issuer or designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The proposed legislation would amend the current definition of “monetary value” found in s. 560.103(21), Florida Statutes. Under the new definition, monetary value would exclude virtual currency.

The proposed legislation would amend the current definition of “electronic instrument” found in section 560.103(14), Florida Statutes, to restrict the use of electronic payments. Under the new definition, an electronic payment would only be used for the transmission, payment, or exchange of **currency or monetary value**. Such revision would serve to exclude use of an electronic payment for the transmission, payment, or exchange of virtual currency.

The proposed legislation would amend the current definition of “payment instrument” found in section 560.103(29), Florida Statutes. The definition would specifically state that the term “payment instrument” means a check, draft warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency, or monetary value. The definition deletes the undefined term “money” and restricts the use of a payment instrument. Under the new provisions, a payment instrument could only be used for the transmission, exchange, or payment of **currency or monetary value**. Such revisions would serve to exclude use of a payment instrument for the transmission, payment, or exchange of virtual currency.

The proposed legislation would amend the current definition of “stored value” found in section 560.103(35), Florida Statutes. The definition strikes the term “funds” and inserts the term “currency.” This revision would serve to exclude virtual currency from the definition of stored value.

### **Incorporation of new definitions in the Florida Control of Money Laundering in Money Services Business Act:**

Upon enactment, the law would amend provisions found in section 560.123, Florida Statutes, requiring the retention of records involving currency and payment instruments. The provisions will now require money services businesses to maintain records of transactions involving monetary value, as the term has been amended, and virtual currency, as newly defined.

In addition to requiring money services business to keep records of transactions involving currency and payment

<sup>10</sup> The term “location” means a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter. See s. 560.103(20), F.S.

instruments having a value of more than \$10,000, the law would require money services business to keep records of transactions involving monetary value and virtual currency having a value of more than \$10,000. In addition, the proposed law would grant the Financial Services Commission specific rulemaking authority to implement the record keeping requirement.

Under present law, a money services business must treat multiple financial transactions as a single transaction if the money services business knows that the transactions are made by or on behalf of any one person and result in cash in or cash out totaling more than \$10,000 during any day. Currently, the provision is limited to cash in or cash out totaling more than \$10,000 during any day; however, the proposed legislation would strike the limiting language and extend the provisions to include value in and value out totaling more than \$10,000 during any day. Expanding the language would not only account for cash in and cash out totaling more than \$10,000 during any day, but would also account for the value of currency, payment instruments, monetary value or virtual currency totaling more than \$10,000 during any day.

Under present law, a person found to have willfully violated the “Florida Control of Money Laundering in Money Services Business Act” in a transaction involving currency or payment instruments is considered to have committed a felony and is subject to criminal penalties. Upon enactment, the law would expand this provision to include violations involving monetary value or virtual currency.

Under present law, a person who has been convicted of, pled guilty or pled nolo contendere to, having violated certain provisions in section 560.123, F.S., related to transactions involving currency or payment instruments may be sentenced to pay a fine. Once amended, this provision would extend to transactions involving monetary value and virtual currency.

Under present law, a person found to have willfully violated the “Florida Control of Money Laundering in Money Services Business Act” in a transaction involving currency or payment instruments is liable for a civil penalty. Once amended, this civil penalty would extend to transactions involving monetary value and virtual currency.

#### **Changes related to penalties for unlicensed activity:**

Section 560.125, F.S., sets forth provisions related to penalties for unlicensed activity and currently contemplates criminal and civil penalties for violations involving currency or payment instruments. Once enacted, the new law would extend such penalties to transactions involving monetary value and virtual currency.

#### **Changes related to license requirements and compensation:**

Currently, section 560.204(1), Florida Statutes, enumerates certain activities requiring licensure under part II of chapter, 560, F.S. Once amended, the law would strike the enumeration of activities requiring licensure and instead identify the required license by name.

Upon enactment, the law would expand the term “compensation” to include not only profit or loss on the exchange of currency, but also profit or loss on the exchange of monetary value or virtual currency.

#### **Changes related to conduct of business:**

Under present law, a payment instrument seller and money transmitter must ensure that money transmitted is available to the designated recipient within 10 business days after receipt. Once enacted, the new law would strike the term “money” and expand the provision to include currency (includes money), monetary value, payment instruments, and virtual currency.

Under present law, payment instrument sellers and money transmitters are required to immediately provide a confirmation or sequence number to the customer verbally, by paper, or electronically upon receipt of currency and payment instruments. Upon enactment, the law would expand this provision to include the receipt of monetary value and virtual currency.

#### **Changes related to authorized vendors:**

Under present law, if a payment instrument seller or money transmitter designates an authorized vendor to act on its behalf, it is required to enter into a written contract with the authorized vendor. The written contract must, among other things, require the authorized vendor to immediately report to the licensee, upon discovery, the theft or loss of currency received for a transmission or payment instrument. Once enacted, this provision would extend to the theft or loss of monetary value or virtual currency received. Additionally, the amended provision would clarify that this provision applies to payment instruments received for transmission and payment instruments sold.

Currently, the written contract must, among other things, require the authorized vendor to hold in trust, for a time certain, all currency and payment instruments received for transmission or for the purchase of payment instruments. Once enacted, this provision would extend to monetary value and virtual currency.

Currently, the written contract must, among other things, require the authorized vendor to not commingle money received for transmissions accepted or payment instruments sold on behalf of the licensee, with the money or property of the authorized vendor, except in certain circumstances. The provision, as currently written, is limited to the commingling of money and property. The legislation, once enacted, would strike the limiting language and expand the prohibition to include the commingling of currency (which includes money), monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold on behalf of the licensee with the assets or property of the authorized vendor, except in certain circumstances.

Currently, the written contract must, among other things, require the authorized vendor to ensure that money is accounted for at the end of the day. The current language is limited to the accounting of money. Once enacted, the bill's provisions would strike the limiting language and expand the provisions to include currency (which includes money), monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold.

#### **Changes related to permissible investments:**

Upon enactment, the law would require a money transmitter receiving virtual currency, directly or through an authorized vendor, for the purpose of transmitting the virtual currency from one person to another location or person, to hold virtual currency of the same type and amount owed or obligated to the other location or person, until the obligation is completed. Virtual currency received and held would not be included in the amount of outstanding money transmissions for the purpose of calculating the permissible investments required in section 560.210(1), Florida Statutes.<sup>11</sup>

#### **Changes related to required records:**

Currently, payment instrument sellers and money transmitters are required to retain for 5 years, a daily record of payment instruments sold and transmitted. The current language is limited to the retention of records related to payment instruments sold and transmitted. Upon enactment, the law would strike the limiting language, and expand the provisions to include currency, monetary value, payment instruments, and virtual currency transmitted.

Currently, payment instrument sellers and money transmitters are required to retain for 5 years, records of outstanding payment instruments and money transmitted. The current language is limited to the retention of records related to outstanding payment instruments and money transmitted. Upon enactment, the law would strike the limiting language and expand the provisions to include currency, monetary value, payment instruments, and virtual currency transmitted.

Currently, payment instrument sellers and money transmitters are required to retain for 5 years, records of each payment instrument paid, and money transmission delivered. The current language is limited to the retention of records related to each payment instrument paid and money transmission delivered. Upon enactment, the law would strike the limiting language and expand the provisions to include currency, monetary value, payment instruments, and virtual currency transmissions that are delivered.

The proposed legislation would require payment instrument sellers and money transmitters to retain for 5 years additional records related to virtual currency and would prescribe rulemaking authority related to the recordkeeping requirement.

#### **Changes related to financial liability:**

Currently, payment instrument sellers and money transmitters are liable for the payment of all money transmitted. Such language limits liability to **money transmitted**. Upon enactment, the law would strike the limiting language and expand the financial liability provisions to include currency, monetary value, payment instruments, and virtual currency transmitted. Additionally, the provisions would retain liability language related to payment instruments sold.

#### **Changes to chapter 559, part XII ("Part XII"), Florida Statutes:**

Upon enactment, the language would be substantially similar to the language currently found in section, 559.952(4)(a)11., Florida Statutes, which excepts a sandbox licensee from the provisions of section 560.204(1),

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<sup>11</sup> 560.210(1), F.S., requires a licensee to possess permissible investments (e.g. cash, certificates of deposit, shares in a money market mutual fund, etc.) with an aggregate market value, calculated in accordance with generally accepted accounting principles, of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.

Florida Statutes. Section 560.204(1), Florida Statutes, prohibits a person from engaging in, or in any manner advertising that they engage in, the selling or issuing of payment instruments or in the activity of a money transmitter, for compensation, without first obtaining a license under part II of chapter, 560. F.S. The bill would strike language enumerating excepted activities and instead, identify excepted license types by name.

**2. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y  N**

If yes, explain:	Section 3 of the proposed legislation grants the Financial Services Commission the authority to prescribe, by rule, recordkeeping requirements relating to financial transactions involving currency, monetary value, payment instruments or virtual currency.  Section 9 of the proposed legislation grants the Financial Services Commission the authority to prescribe, by rule, recordkeeping requirements relating to virtual currency.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	The proposed legislation may require the amendment of rules 69V-560.702, 69V-560.703, 69V-560.706, F.A.C.

**3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

**4. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**5. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y  N**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. FISCAL IMPACT TO LOCAL GOVERNMENT**

Y  N

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. FISCAL IMPACT TO STATE GOVERNMENT**

Y  N

Revenues:	The proposed legislation seeks to clarify who must obtain a money transmitter license if dealing in virtual currency. The Office expects that this proposed legislation will prompt an increase in money transmitter applications resulting in additional revenue. The projected number of applications and amount of increased revenue is unknown at this time.
Expenditures:	The proposed legislation seeks to clarify who must obtain a money transmitter license if dealing in virtual currency. The Office could see an increase in money transmitter applications resulting in additional licensees under Chapter 560, F.S., who are statutorily mandated to be examined at least once every five years. The projected number of additional licensees and corresponding examination expenses is unknown at this time. The Office may need to seek additional staffing during future legislative sessions if the number of new licensees dealing in virtual currency significantly increases beyond the Office's capacity to absorb the additional workload.  The state would incur insignificant costs associated with rulemaking, which would be absorbed within the Office's existing expense budget.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

**3. FISCAL IMPACT TO THE PRIVATE SECTOR**

Y  N

Revenues:	Unknown
Expenditures:	The proposed bill seeks to explicitly regulate virtual currency in Florida within the context of chapter 560, F.S., over which the Office has enforcement authority. Those businesses impacted by this bill will be required to file an application for a money transmitter license and be subject to examinations at least once every five years. The following fees are required by section 560.143, F.S.:  1. For initial licensure: a. Application fee of \$375.

	<ul style="list-style-type: none"> <li>b. Fingerprinting fees paid to authorized live scan vendors that average \$65 per individual with a controlling interest.</li> <li>c. Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.</li> </ul> <p>2. Bi-annual renewal fees:</p> <ul style="list-style-type: none"> <li>a. \$750 renewal fee</li> <li>b. Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.</li> </ul> <p>Additionally, licensees are required to reimburse the Office for examination expenses. The average examination fee imposed by the Office for fiscal year 2019-20 (pre-COVID) was \$3800. This fee would be imposed on average once every five years.</p>
Other:	Unknown

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y  N**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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**FEDERAL IMPACT**

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N**

If yes, describe the anticipated impact including any fiscal impact.	<p>Upon enactment, there would be greater parity between state and federal law related to the definition of money transmitter, as both Florida's definition of money transmitter found in chapter 560, Florida Statutes, and FinCEN's definition of money transmitter would explicitly include a third-party intermediary and contemplate the use of virtual currency. See 31 C.F.R. § 1010.100(ff)(5)(i)(A).</p> <p>Additionally, the proposed bill seeks to impose BSA reporting requirements on virtual currency transactions. Subsection 560.123(3)(c), F.S., provides the timely filing of reports required by 31 U.S.C. s. 5313 (filing currency transaction reports with FinCEN) will satisfy this requirement. FinCEN issued a Notice of proposed rulemaking on December 23, 2020, and on January 15, 2021, reopened the comment period for 15 days for comments on the proposed reporting requirements. To date, FinCEN has not finalized the proposed rules, thereby leaving the reporting guidance unresolved. A challenge could evolve if</p>
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	the bill passes and becomes effective before FinCEN's rules become final and provide a mechanism for BSA reporting of virtual currency transactions.
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**ADDITIONAL COMMENTS**

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:	OGC has reviewed the agency's bill analysis concerning SB 486, and the analysis sufficiently details the effect of the bill and the areas of impact. OGC has no issues, concerns or further comments regarding the bill.
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# 2022 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION	
<b>BILL NUMBER:</b>	SB 486
<b>BILL TITLE:</b>	Money Services Businesses
<b>BILL SPONSOR:</b>	Senator Brodeur
<b>EFFECTIVE DATE:</b>	January 1, 2023

COMMITTEES OF REFERENCE
1) Banking and Insurance
2) Appropriations Subcommittee on Agriculture, Environment, and General Government
3) Appropriations
4)
5)

CURRENT COMMITTEE
Banking and Insurance

SIMILAR BILLS	
<b>BILL NUMBER:</b>	HB 273 /
<b>SPONSOR:</b>	Aloupis, Jr.

IDENTICAL BILLS	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

PREVIOUS LEGISLATION	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
<b>DATE OF ANALYSIS:</b>	November 3, 2021
<b>LEAD AGENCY ANALYST:</b>	Robin Sparkman
<b>ADDITIONAL ANALYST(S):</b>	Tracy Townsend, Becky Bezemek
<b>LEGAL ANALYST:</b>	Jim Martin, Weston Petkovsek
<b>FISCAL ANALYST:</b>	Cynthia Barr

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## POLICY ANALYSIS

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### **1. EXECUTIVE SUMMARY**

Revising exceptions to general laws and rules for licensees during the Financial Technology Sandbox period; defining the term “virtual currency”; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising criminal and civil penalties for certain violations relating to unlicensed activity involving money services businesses and deferred presentment providers; requiring money transmitters that receive virtual currency for specified purposes to hold a certain type and amount of virtual currency until the transmission obligation is completed, etc.

### **2. SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:** The Florida Office of Financial Regulation (OFR) is seeking to submit financial technology sandbox applicants for fingerprint-based state and national criminal history record checks under s. 559.952, FS. The Federal Bureau of Investigation (FBI) has tentatively approved these applicants’ screenings.
2. **EFFECT OF THE BILL:** Results in the modification of s. 559.952, FS. Specifically, “...the selling or issuing of payment instruments...” is being replaced with “...payment instrument seller...” Consequently, the department may be required to notify the FBI of the amendment to s. 559.952, FS, for their consideration if s. 559.952, FS, still meets the criteria of Public Law 92-544.
3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES?** Y  N

If yes, explain:	
What is the expected impact to the agency’s core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

#### **4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	
Provide a summary of the proponents’ and opponents’ positions:	

#### **5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y N

If yes, provide a description:	
Date Due:	
Bill Section Number:	

#### **6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?** Y N

Board:	
Board Purpose:	
Who Appointments:	

Appointee Term:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y  N**

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N**

Revenues:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	
What is the impact of the increase or decrease?	
Bill Section Number:	

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**TECHNOLOGY IMPACT**

**1. DOES THE LEGISLATION IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y  N**

If yes, describe the anticipated impact to the agency including any fiscal impact.	The impact of the bill is unknown. FDLE would need to know the estimated number of individuals falling under the scope of this bill to assess the impact.
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**FEDERAL IMPACT**

**1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N**

If yes, describe the anticipated impact including any fiscal impact.	
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**LEGAL - GENERAL COUNSEL’S OFFICE REVIEW**

Issues/concerns/comments and recommended action:	
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**ADDITIONAL COMMENTS**

Lines 78-82: Upon passage of this bill, the FDLE will notify the FBI of the changes made to s. 559.952, FS. The FBI may review the changes and issue a determination on if the OFR is permitted to continue screening financial technology sandbox applicants through state and national criminal history record checks.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Environment.

**Subject:** Committee Agenda Request

**Date:** January 13, 2022

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I respectfully request that **Senate Bill 486**, relating to **Money Services Businesses**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur".

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Senator Jason Brodeur  
Florida Senate, District 9

1/26/2022

The Florida Senate  
**APPEARANCE RECORD**

SB 486

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Sub. on Agriculture, Environment, and General Government

Committee

Amendment Barcode (if applicable)

Name **Commissioner Russ Weigel**

Phone

Address **101 E Gaines St**

Email **Russell.Weigel@flofr.gov**

Street

**Tallahassee**

**FL**

**32399**

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Office of Financial Regulation**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/26/22

Meeting Date

486

Bill Number (if applicable)

Topic MONEY SERVICES

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing The James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/SB 606 (271670)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government;  
and Senator Garcia

SUBJECT: Boating Safety

DATE: January 28, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson/Carroll</u>	<u>Rogers</u>	<u>EN</u>	<b>Favorable</b>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

PCS/SB 606 creates the “Boating Safety Act of 2022.”

Relating to liveries, the bill:

- Requires a no-cost, annual livery permit, effective January 1, 2023;
- Requires liveries to implement certain safety requirements; and
- Adds penalties for violations of livery requirements.

The bill increases or adds penalties for noncriminal infractions of vessel safety laws. It increases the additional civil penalty for noncriminal infractions of vessel laws from \$50 to \$100. It directs certain penalties to the Marine Resource Conservation Trust Fund to supplement law enforcement activities.

Relating to boating safety programs, the bill:

- Adds a \$500 fine for certain vessel operators;
- Requires the Florida Fish and Wildlife Conservation Commission (FWC) to maintain a program to ensure compliance with mandatory boating safety education requirements; and
- Creates the Illegal Boating Strike Team to enhance law enforcement activities.

The bill requires a physical residential or business address for vessel registration applicants, with a limited exception for live-aboard vessel owners.

The bill provides an appropriation of \$2 million in recurring funds from the General Revenue Fund to the FWC and authorizes seven positions with associated salary rate of \$322,763 for the Illegal Boating Strike Team. The bill also appropriates \$100,000 in recurring funds from the General Revenue Fund to the FWC and authorizes one position with associated salary rate of \$60,000, relating to ensuring compliance with mandatory boating safety education requirements.



The bill also appropriates \$125,000 in nonrecurring funds for the 2022-2023 fiscal year from the General Revenue Fund to the FWC for the purpose of implementing the no-cost livery permitting requirement.

## II. Present Situation:

### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.<sup>1</sup> The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate.<sup>2</sup> Under Article IV, section 9 of the Florida Constitution, the FWC has the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.<sup>3</sup> The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.<sup>4</sup> This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.<sup>5</sup>

### Regulation of Liveries

A livery vessel is defined as a vessel that is leased, rented, or chartered to another for consideration.<sup>6</sup> A livery may not knowingly lease, hire, or rent vessels:

- When the number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel.
- When the horsepower of the motor exceeds the capacity of the vessel.
- When the vessel does not contain required safety equipment.
- When the vessel is not seaworthy.
- When the vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides required pre-rental or pre-ride instruction, which must be provided by a person who

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<sup>1</sup> FLA. CONST. art. IV, s. 9.

<sup>2</sup> *Id.*; see also s. 379.102(1), F.S.

<sup>3</sup> Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>4</sup> Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Nov. 22, 2021).

<sup>5</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Nov. 22, 2021). See s. 327.70(1) and (4), F.S.

<sup>6</sup> Section 327.02(24), F.S.

has successfully completed a National Association of State Boating Law Administrators and state-approved boater safety course.

- Unless the livery displays boating safety information in a place visible to the renting public.<sup>7</sup>

A livery also may not knowingly lease, hire, or rent:

- Vessels powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless the person presents photographic identification and a valid boater safety identification card to the livery, or meets one of the listed exemptions.<sup>8</sup>
- Personal watercraft to persons under 18 years of age or who have not received instruction in the safe handling of personal watercraft and provided a written statement attesting to that fact.<sup>9</sup>
- Personal watercraft without a proper insurance policy.<sup>10</sup>

Liveries are required to notify the proper authorities if a leased, hired, or rented vessel is unnecessarily overdue.<sup>11</sup> Violations of livery regulations are a second-degree misdemeanor.<sup>12</sup>

### **Boating Infractions and Penalties**

Chapter 327, F.S., the “Florida Vessel Safety Law,” addresses boating violations.<sup>13</sup> The law imposes a statutory duty to assist other persons in a vessel collision or accident, provide information to any injured parties or the owner of damaged property, and provide notice to law enforcement of the accident.<sup>14</sup> Leaving the scene of an accident that resulted in personal injury is a third-degree felony, and leaving the scene of an accident that resulted in property damage is a second-degree misdemeanor.<sup>15</sup>

Section 327.73, F.S., sets forth the fines for noncriminal infractions of the Florida Vessel Safety Law. Unless otherwise specified, the civil penalty for a noncriminal infraction is \$50.<sup>16</sup> If a person fails to appear or respond to a uniform boating citation, he or she is charged with the offense of failing to respond to a citation. Upon conviction, such person will be guilty of a second-degree misdemeanor.<sup>17</sup> Noncriminal violations include operating with an expired registration, operating without a registration, and failing to display the appropriate registration information.

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<sup>7</sup> Section 327.54(1), F.S.

<sup>8</sup> Section 327.54(2), F.S.

<sup>9</sup> Section 327.54(4), F.S.

<sup>10</sup> Section 327.54(5), F.S.

<sup>11</sup> Section 327.54(3), F.S.

<sup>12</sup> Section 327.54(6), F.S.

<sup>13</sup> Section 327.01, F.S.

<sup>14</sup> Section 327.30(1), (2), and (3), F.S.

<sup>15</sup> Section 327.30, F.S.

<sup>16</sup> Section 327.73(1), F.S.

<sup>17</sup> *Id.*

Several noncriminal violations are subject to increased penalties for additional offenses. For example, for a violation of navigation rules that does not result in an accident or that results in an accident without serious bodily injury or death, there is a maximum penalty of:

- \$250 for a first offense;
- \$750 for a second offense; and
- \$1,000 for a third or subsequent offense.<sup>18</sup>

For violating a springs protection zone, or operating a vessel in a careless manner that causes seagrass scarring within an aquatic preserve, except the Lake Jackson, Ocklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, the penalty is:

- \$50 for a first offense;
- \$250 for a second offense occurring within 12 months of a prior conviction;
- \$500 for a third offense occurring within 36 months of a prior conviction; and
- \$1,000 for a fourth or subsequent offense occurring within 72 months of a prior conviction.<sup>19</sup>

For anchoring in an anchoring limitation area and anchoring or mooring in a prohibited area, the penalty is:

- A maximum of \$50 for a first offense;
- A maximum of \$100 for a second offense; and
- A maximum of \$250 for a third or subsequent offense.<sup>20</sup>

For violating areas where vessels creating special hazards are operating, the penalty is:

- \$50 for a first offense;
- \$100 for a second offense occurring within 12 months of a prior offense; and
- \$250 for a third offense occurring within 36 months of a prior offense.<sup>21</sup>

### **Mandatory Education for Violators**

A person who is convicted of two non-criminal boating safety infractions within a 12-month period must enroll in, attend (in-person or online), and successfully complete a National Association of State Boating Law Administrators and state-approved boater education course.<sup>22</sup> The person must file proof of completion of the course with the FWC's Boating and Waterways Section within 90 days of the violation and is not permitted to operate a vessel until proof is filed.<sup>23</sup>

A person who is convicted of a criminal boating violation or a noncriminal boating safety infraction that resulted in a boating accident must complete the boater education course,<sup>24</sup> as well

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<sup>18</sup> Section 327.73(o), F.S.

<sup>19</sup> Section 327.73(x) and (y), F.S.

<sup>20</sup> Section 327.73(z) and (bb), F.S.

<sup>21</sup> Section 327.73(cc), F.S.

<sup>22</sup> Section 327.731(1)(a), F.S.

<sup>23</sup> Section 327.731(1)(b) and (c), F.S.

<sup>24</sup> Section 327.731(1), F.S.; *see also* FWC, *Mandatory Boating Education*, <https://myfwc.com/boating/regulations/mandatory-boating-education/> (last visited Oct. 6, 2021).

as a separate course for violators. The provider of the course for violators automatically sends proof of completion electronically to the FWC.<sup>25</sup>

### **Marine Resources Conservation Trust Fund**

The Marine Resources Conservation Trust Fund (MRCTF) within the FWC serves as a broad-based depository for funds from various marine-related and boating-related activities.<sup>26</sup> The FWC can administer the trust fund for the following purposes:

- Marine research;
- Fishery enhancement;
- Marine law enforcement;
- Administration of licensing programs for recreational fishing, saltwater products sales, and related information and education activities;
- FWC operations;
- Titling and registration of vessels;
- Marine turtle protection, research, and recovery activities;
- Rehabilitation of oyster harvesting areas;
- Boating research, boating-related programs and activities, and law enforcement on state waters; and
- The stone crab trap reduction program, the blue crab effort management program, the spiny lobster trap certificate program, and the trap retrieval program.<sup>27</sup>

The MRCTF will receive the proceeds from:

- All license fees for purse seines, saltwater products, nets, special activities, Apalachicola Bay oyster harvesting, and wholesale and retail saltwater products dealers;
- All funds collected from vessel registration and other related fees;
- All fees related to the spiny lobster, blue crab, and black sea bass trap retrieval program; the tarpon license program; the stone crab take endorsement; the blue crab take endorsement; and the spiny lobster trap certificate program;
- All fines and penalties relating to take, harvest, or possession of certain marine life; use of illegal nets; violations involving certain finfish; and violations involving saltwater products; and
- Other revenues as provided by law.<sup>28</sup>

### **Vessel Titling and Registrations**

All motorized vessels operating on Florida's public waterways must be titled and registered pursuant to ch. 328, F.S.<sup>29</sup> The Department of Highway Safety and Motor Vehicles (DHSMV) is

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<sup>25</sup> FWC, *Mandatory Boating Education*, <https://myfwc.com/boating/regulations/mandatory-boating-education/> (last visited Oct. 6, 2021).

<sup>26</sup> Section 379.208(1), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 379.208(2), F.S.

<sup>29</sup> *See* s. 328.03, F.S. Certain vessels are not required to have a certificate of title, including, but not limited to, vessels used only on private lakes or ponds and vessels owned by the U.S. Government or a state or political subdivision thereof.

responsible for issuing vessel registrations and titles.<sup>30</sup> Registration and title applications must be filed at a county tax collector or license plate agent office,<sup>31</sup> but the DHSMV is responsible for issuing vessel registrations.<sup>32</sup>

A purchaser of a new or used vessel has 30 days to title and register the vessel.<sup>33</sup> The required information for a vessel registration application includes: the owner's name and address; residency status; personal identification (a driver license or identification card) or business identification (a federal employer identification number or Florida state, city, or county business license or number); a complete description of the vessel; payment of the applicable fee; and proof of ownership of the vessel.<sup>34</sup> During the 30-day period before registration, the owner must carry proof of the date of purchase aboard the vessel.<sup>35</sup>

Every vessel operated, used, or stored on the waters of Florida must be registered unless it is:

- A vessel operated, used, and stored exclusively on private lakes and ponds;
- A vessel owned by the United States Government;
- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- A vessel already covered by a registration number awarded to it by another state or the U.S. Coast Guard, if the vessel is not located in this state for more than 90 consecutive days;
- A vessel from a country other than the United States, if the vessel is not located in this state for more than 90 days;
- An amphibious vessel for which a vehicle title is issued by the DHSMV;
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; or
- A vessel owned and operated by the state or a political subdivision thereof.<sup>36</sup>

No person may sell, assign, or transfer a vessel titled in the state without providing the purchaser or transferee a valid certificate of title with an assignment on it showing transfer of title to the purchaser or transferee.<sup>37</sup> The purchaser or transferee is required to file an application for a title transfer with the county tax collector within 30 days after a change in vessel ownership.<sup>38</sup> Unless specified otherwise, a person who fails to meet titling and registration requirements is guilty of a second degree misdemeanor.<sup>39</sup>

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<sup>30</sup> Section 328.40, F.S.

<sup>31</sup> Section 328.48(1)(a), F.S.

<sup>32</sup> Section 328.48(3), F.S.

<sup>33</sup> Section 328.46(1), F.S.

<sup>34</sup> Section 328.48(1), F.S.

<sup>35</sup> Section 328.46(1), F.S.

<sup>36</sup> Section 328.48(2), F.S.

<sup>37</sup> Section 328.03(3), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 328.21, F.S.

## Wildlife Alert

The Wildlife Alert Reward Association, Inc. (Wildlife Alert) is a 501(c)(3) non-profit organization created in 1979 that allows citizens to report known or suspected violations of Florida's fish, wildlife, environmental, and boating laws, and encourages citizen involvement in conservation and protection.<sup>40</sup> In 2014, Wildlife Alert and the FWC signed a letter of agreement recognizing Wildlife Alert as an FWC Citizen Support Organization.<sup>41</sup> Reporters who know or suspect a violation of Florida's fish, wildlife, environmental, or boating laws may call, text, or file an online report. They may be asked to provide information about the physical descriptions of violators and vehicles, license tag numbers, locations, and other pertinent information. Reporters may remain anonymous. The Wildlife Alert program offers rewards in exchange for information that leads to the arrest of poachers or other violators.<sup>42</sup>

### III. Effect of Proposed Changes:

**Section 1** names this act the "Boating Safety Act of 2022."

**Section 2** amends s. 327.30, F.S., to create an additional fine of up to \$1,000 for a violation of the vessel collision and accident laws, or any associated rule or order of the Fish and Wildlife Conservation Commission (FWC). A conviction is any judicial disposition other than acquittal or dismissal. Money from the additional fines shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund (MRCTF) to enhance law enforcement activities relating to boating infractions.

**Section 3** amends s. 327.54, F.S., to revise existing requirements for liveries. The bill defines the term "conviction" as any judicial disposition other than acquittal or dismissal. It defines "livery" as a person who offers a vessel for use by another in exchange for any type of consideration when such person does not also provide the lessee or renter with a captain, a crew, or any type of staff or personnel to operate, oversee, maintain, or manage the vessel. A vessel rented or leased by a livery is a livery vessel. The bill defines "seaworthy" to mean a vessel whose parts and equipment, including, but not limited to, engines, bilge pumps, and kill switches, are functional and reasonably fit for their intended purpose.

The bill provides that, effective January 1, 2023, a livery must obtain a no-cost annual livery permit from the FWC. To qualify for the permit, an applicant must:

- Provide the FWC with a list of vessels offered by the livery for lease or rent by another;
- Have a sufficient amount of U.S. Coast Guard-approved lawful personal flotation devices on site to accommodate the capacity of all vessels offered by the livery for lease or rent by another;
- Have on site all safety equipment required by the U.S. Coast Guard to equip all vessels offered by the livery for rent or lease by another; and
- Display boating safety information in a place visible to the renting public.

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<sup>40</sup> FWC, *Wildlife Alert* (2014), available at <https://myfwc.com/media/4539/wildlife-alert.pdf> (last visited Nov. 22, 2021).

<sup>41</sup> FWC, *Wildlife Alert Reward Program* (2020), available at [https://flmtph.myfwc.com/media/19135/10\\_travis\\_wildlife-alert-pp-2020-mstm.pdf](https://flmtph.myfwc.com/media/19135/10_travis_wildlife-alert-pp-2020-mstm.pdf) (last visited Nov. 22, 2021).

<sup>42</sup> *Id.*

If the information required to qualify for a permit changes before the annual renewal of the permit, the livery must provide the FWC with the updated information within 10 days after the change. The bill authorizes the FWC to adopt rules to implement the no-cost livery permit program. A violation of the permit requirement is a misdemeanor of the first degree.

The bill prevents a livery from knowingly leasing or renting a derelict vessel or a vessel at risk of becoming derelict.

The bill removes the prohibition that a livery cannot knowingly lease or rent a vessel to any person if it is equipped with a motor of 10 horsepower or greater unless the livery provides pre-rental or pre-ride instruction. Instead, pre-rental or pre-ride instruction must be in compliance with rules established by the FWC. The bill provides that instruction on local characteristics of the waterway where the vessel will be operated includes navigational hazards, boating-restricted areas, and water depths, as well as emergency procedures such as appropriate responses to capsizing, falls overboard, taking on water, and vessel accidents. The bill reorganizes language requiring the person delivering this information to have successfully completed a boater safety course.

The bill adds that a livery may not knowingly lease or rent a vessel to any person unless the livery has a written agreement with the renter or lessee. The livery must maintain each agreement for no less than one year and must make it available for inspection by law enforcement upon request. The written agreement must include:

- The names, addresses, and dates of birth of all persons who will be aboard the vessel;
- The time the vessel must be returned to the livery or other specified location; and
- An emergency contact name, address, and telephone number.

A livery may not knowingly lease or rent a vessel to any person who is required to have photographic identification and a boating safety card or certificate, unless the person presents the required documentation for the operation of a vessel or is exempt from the requirement.

The following requirements, which currently apply to “personal watercraft,” are broadened to apply to “vessels”:<sup>43</sup>

- A livery may not knowingly lease or rent a vessel to any person under 18 years of age.
- A livery may not knowingly lease or rent a vessel to any person unless the livery first obtains a policy from a licensed insurance carrier in Florida, which insures the livery and renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the vessel. The policy must provide coverage of at least \$500,000 per person and \$1 million per event. The livery and renter must have proof of insurance available for inspection at the location where the vessels are being leased or rented or offered for lease or rent. The livery shall provide the insurance carrier’s name and address and the insurance policy number to each renter.

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<sup>43</sup> A “personal watercraft” is a vessel 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel. Section 327.02(36), F.S. A “vessel” includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Section 327.02(47), F.S.

- The bill requires a person who receives instruction regarding the safe operation of vessels or pre-rental or pre-ride instruction to provide the livery with a signed form attesting to each component of the instruction. The FWC shall establish the form's content by rule. The bill also requires that the form be signed by the individual providing instruction, and the livery shall maintain the form for no less than 90 days and make the form available for inspection by law enforcement upon request.

The bill clarifies that if a vessel rented or leased by a livery is unnecessarily overdue more than one hour after the contracted rental time has expired, then the livery must notify law enforcement and the U.S. Coast Guard.

The bill requires that a livery must report an accident resulting in bodily injury, death, or disappearance of any person, or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000 when the operator is incapable of making a report.

The bill provides that a livery shall make its facilities and records available for inspection within 24 hours of notice by law enforcement.

The bill provides penalties for violations of the livery requirements:

- A person who violates one or more statutory requirements for liveries, but not the no-cost livery permit requirement, and who has not been convicted of a violation of the livery requirements in the past three years, commits a misdemeanor of the second degree and may face imprisonment of no more than 60 days and/or a fine of no more than \$500.
- If the violation has occurred within three years after a previous conviction, the person commits a misdemeanor of the first degree and may face imprisonment of no more than one year and/or a fine of no more than \$1,000. There is an additional minimum mandatory fine of \$500.
- If the person commits another violation within five years after two previous convictions for violations of the livery requirements, the person commits a misdemeanor of the first degree and may face imprisonment of no more than one year and/or a fine of no more than \$1,000. There is an additional minimum mandatory fine of \$1,000.
- A person who commits more than one violation of the livery requirements, but not the no-cost livery permit requirement, within a three year period may not act as a livery during a 90-day period immediately after being charged. Effective January 1, 2023, the FWC may revoke or refuse to issue a no-cost livery permit based on repeated violations of the livery requirements.

**Section 4** amends s. 327.73, F.S., to increase the following penalties for noncriminal infractions:

- The maximum fine for an owner or operator of a vessel with an expired registration of six months or less is increased from \$50 to \$100 for a first and subsequent offense.
- The maximum fine for violating the navigation rules in a way that is not reckless and does not result in an accident, or results in an accident that does not cause serious bodily injury or death:
  - Is increased from \$250 to \$500 for a first offense.
  - Is increased from \$750 to \$1,000 for a second offense.
  - Is increased from \$1,000 to \$1,500 for a third or subsequent offense.



- The fine for operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve, except the Lake Jackson, Ocklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, is increased from \$50 to \$100 for a first offense.
- The fine for operating a vessel in violation of a springs protection zone is increased from \$50 to \$100 for a first offense.
- The maximum fine for anchoring a vessel in an anchoring limitation area:
  - Is increased from \$50 to \$100 for a first offense;
  - Is increased from \$100 to \$250 for a second offense; and
  - Is increased from \$250 to \$500 for a third or subsequent offense.
- The fine for violating an area where vessels creating a special hazard are operating:
  - Is increased from \$50 to \$100 for a first offense;
  - Is increased from \$100 to \$250 for a second offense occurring within 12 months after a prior offense; and
  - Is increased from \$250 to \$500 for a third offense occurring within 36 months after a prior offense.
- The maximum civil penalty for noncriminal violations of vessel laws is increased from \$50 to \$100, except as otherwise provided.

The bill adds the following penalties for noncriminal infractions:

- The maximum fine for improper transfer of vessel title is \$500.
- The maximum fine for failure to update vessel registration information is \$500.

The bill adds law enforcement purposes to the uses of fees and civil penalties collected pursuant to this section.

**Section 5** amends s. 327.731, F.S., relating to mandatory education for violators. The bill adds a fine of \$500 to the list of requirements that are triggered if a person is:

- Convicted of a criminal violation under ch. 327, F.S. (relating to vessel safety);
- Convicted of a noncriminal infraction under ch. 327, F.S., if it resulted in a reportable boating accident; or
- Convicted of two noncriminal infractions of vessel laws, if the infractions occurred within a 12-month period. These infractions relate to:
  - Careless operation;
  - Waterskiing, aquaplaning, parasailing, and similar activities;
  - Interfering with navigation;
  - Violating boating-restricted areas and speed limits;
  - Required safety equipment, lights, and shapes;
  - Violating navigation rules in a way that does not result in an accident, or that results in an accident not causing serious bodily injury or death;
  - Personal watercraft;
  - Boater safety education;
  - Operating overloaded or overpowered vessels;
  - Divers-down warning devices;
  - Adequate mufflers on airboats;
  - Displaying a flag on an airboat;

- Carelessly causing seagrass scarring; and
- Violating springs protection zones.

The clerk of the court shall remit the fines to be deposited into the MRCTF to support law enforcement activities.

The bill requires the FWC to maintain a program to ensure compliance with mandatory boating safety education requirements. The program must track any citation resulting in a conviction under this section and send notices to each person subject to the requirement for mandatory boating safety education.

**Section 6** amends s. 328.03, F.S., to provide that any person who does not properly transfer title of a vessel is subject to a maximum penalty of \$500.

**Section 7** amends s. 328.03, F.S., as amended by chapter 2019-76, Laws of Florida, to provide that any person who does not properly transfer title of a vessel is subject to a maximum penalty of \$500. This amendment is effective July 1, 2023.

**Section 8** amends s. 328.48, F.S., to add language requiring a vessel owner to provide a physical residential or business address when filing an application for vessel registration. The bill allows the FWC to authorize a live-aboard vessel owner to provide a post office box address in lieu of a physical residential or business address.

The bill adds language requiring a vessel owner's physical residential or business address on each certificate of registration issued.

The bill provides that a person who does not update his or her vessel registration information with the county tax collector within six months after a change to the information will be subject to a maximum penalty of \$500.

**Section 9** creates the Illegal Boating Strike Team. To this end, the bill appropriates \$2 million in recurring funds for the 2022-2023 fiscal year from the General Revenue Fund to the FWC and authorizes seven positions with associated salary rate of 322,763. The Illegal Boating Strike Team will coordinate law enforcement at the federal, state, and local levels to increase public safety and decrease boating accidents, injuries, fatalities, and criminal activity. In areas where illegal charters and illegal liveries are found to be operating, the strike team shall do all of the following:

- Enhance law enforcement activities by increasing intergovernmental coordination to address any criminal conduct or safety violation, taxes and fees, and licensure regulations by such charter and livery operations;
- Address unsafe customer pick-ups and drop-offs;
- Improve signage and set appropriate speed limits in waterways;
- Ensure correct and current information is used for vessel registration;
- Publicize existing reporting systems and use social media to encourage citizens to report illegal activities; and

- Develop educational campaigns to address and deter illegal charter operations, illegal livery operations, boating under the influence, and related public safety issues, and to encourage the reporting of boating violations.

**Section 10** appropriates \$100,000 in recurring funds for the 2022-2023 fiscal year from the General Revenue Fund to the FWC and authorizes one position with associated salary rate of \$60,000 to implement the amendment made to s. 327.731, F.S., by this act, relating to ensuring compliance with mandatory boating safety education requirements.

**Section 11** appropriates \$125,000 in nonrecurring funds for the 2022-2023 fiscal year from the General Revenue Fund to the FWC for the purpose of implementing the no-cost livery permitting requirement in s. 327.54(2), F.S.

**Section 12** provides that except as otherwise expressly provided, the effective date is July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

Increased boating penalties are expected to have a positive fiscal impact to the state. The bill appropriates \$2 million in recurring funds from the General Revenue Fund to the Fish and Wildlife Conservation Commission (FWC) and authorizes seven positions with associated salary rate of 322,763 for the Illegal Boating Strike Team. The bill also appropriates \$100,000 in recurring funds from the General Revenue Fund to the FWC and authorizes one position with associated salary rate of \$60,000, relating to ensuring compliance with mandatory boating safety education requirements. The bill also appropriates \$125,000 in nonrecurring funds for the 2022-2023 fiscal year from the General Revenue Fund to the FWC for the purpose of implementing the no-cost livery permitting requirement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that violators of s. 327.30, F.S., (relating to vessel collisions, accidents, and casualties) may be ordered to pay an additional fine of up to \$1,000, which must be deposited into the Marine Resources Conservation Trust Fund (MRCTF).<sup>44</sup> However, the bill does not state who is responsible for ensuring the additional fine is deposited in the MRCTF.<sup>45</sup>

The Department of Revenue recommends the following replacement language for Line 73 of the bill: “\$1,000 per violation. All fines assessed and collected pursuant to this subsection shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the Marine.”<sup>46</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.30, 327.54, 327.73, 327.731, 328.03, and 328.48.

**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 Agriculture, Environment, and General Government on January 26, 2022:**

The committee substitute:

- Clarifies that the insurance policies purchased by a livery must cover both the livery and renter;

<sup>44</sup> Department of Revenue, *2022 Agency Legislative Bill Analysis* (Nov. 4, 2021) (on file with the Senate Committee on Environment and Natural Resources).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

- Allows for the FWC to accept a P.O. Box address instead of a physical residential or business address for live-aboard vessel registration applications in certain cases; and
- Clarifies the clerk of the court shall remit all fines assessed and collected to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund.

**B. Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2022	.	
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Appropriations Subcommittee on Agriculture, Environment, and General Government (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 73 - 537

and insert:

\$1,000 per violation. All fines assessed and collected pursuant to this subsection shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund to be used to enhance state and local law enforcement activities related to boating infractions. As used in this subsection, the terms "convicted"



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11 and "conviction" mean any judicial disposition other than  
12 acquittal or dismissal.

13 Section 3. Section 327.54, Florida Statutes, is amended to  
14 read:

15 327.54 Liveries; safety regulations; penalty.—

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

17 (a) "Conviction" means any judicial disposition other than  
18 acquittal or dismissal.

19 (b) "Livery" means a person who offers a vessel for use by  
20 another in exchange for any type of consideration when such  
21 person does not also provide the lessee or renter with a  
22 captain, a crew, or any type of staff or personnel to operate,  
23 oversee, maintain, or manage the vessel. A vessel rented or  
24 leased by a livery is a livery vessel as defined in s. 327.02.

25 (c) "Seaworthy" means the vessel and all of its parts and  
26 equipment, including, but not limited to, engines, bilge pumps,  
27 and kill switches, are functional and reasonably fit for their  
28 intended purpose.

29 (2) Beginning on January 1, 2023, a livery may not offer a  
30 vessel for lease or rent without first being issued a no-cost  
31 livery permit by the commission. The permit must be renewed  
32 annually. To qualify for issuance or renewal of a livery permit,  
33 an applicant must provide the commission with a list of all  
34 vessels offered by the livery for lease or rent by another, have  
35 valid insurance pursuant to paragraph (3)(j), have an amount of  
36 United States Coast Guard-approved lawful personal floatation  
37 devices on site sufficient to accommodate the capacity of all  
38 vessels offered by the livery for rent or lease by another, have  
39 on site all safety equipment required by s. 327.50 and the Code



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40 of Federal Regulations sufficient to equip all vessels offered  
41 by the livery for rent or lease by another, and display the  
42 information required by paragraph (3)(f). If, before the annual  
43 renewal of the permit, the information required by this  
44 subsection changes, the livery must provide the commission with  
45 the updated information within 10 days after the change.

46 (a) The commission may adopt rules to implement this  
47 subsection.

48 (b) A person who violates this subsection commits a  
49 misdemeanor of the first degree, punishable as provided in s.  
50 775.082 or s. 775.083.

51 (3) A livery may not knowingly lease, ~~hire,~~ or rent a  
52 vessel to any person:

53 (a) When the number of persons intending to use the vessel  
54 exceeds the number considered to constitute a maximum safety  
55 load for the vessel as specified on the authorized persons  
56 capacity plate of the vessel.

57 (b) When the horsepower of the motor exceeds the capacity  
58 of the vessel.

59 (c) When the vessel does not contain the ~~required~~ safety  
60 equipment required under s. 327.50.

61 (d) When the vessel is not seaworthy, is a derelict vessel  
62 as defined in s. 823.11, or is at risk of becoming derelict as  
63 provided in s. 327.4107.

64 (e) ~~When the vessel is equipped with a motor of 10~~  
65 ~~horsepower or greater,~~ Unless the livery provides pre-rental  
66 ~~prerental~~ or pre-ride ~~preride~~ instruction in compliance with  
67 rules established by the commission. The instruction must  
68 include ~~that includes,~~ but need not be limited to:





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69 1. Operational characteristics of the vessel to be rented.

70 2. Safe vessel operation and vessel right-of-way.

71 3. The responsibility of the vessel operator for the safe  
72 and proper operation of the vessel.

73 4. Local characteristics of the waterway where the vessel  
74 will be operated, such as navigational hazards, the presence of  
75 boating-restricted areas, and water depths.

76 5. Emergency procedures such as appropriate responses to  
77 capsizing, falls overboard, taking on water, and vessel  
78 accidents.

79  
80 ~~Any person delivering the information specified in this~~  
81 ~~paragraph must have successfully completed a boater safety~~  
82 ~~course approved by the National Association of State Boating Law~~  
83 ~~Administrators and this state.~~

84 (f) Unless the livery displays boating safety information  
85 in a place visible to the renting public. The commission shall  
86 prescribe by rule, pursuant to chapter 120, the contents and  
87 size of the boating safety information to be displayed.

88 (g) Unless the livery has a written agreement with the  
89 renter or lessee. The written agreement must include a list of  
90 the names, addresses, and dates of birth for all persons who  
91 will be aboard the vessel, as well as the time the vessel is  
92 required to be returned to the livery or another specified  
93 location and an emergency contact name, address, and telephone  
94 number. The livery shall maintain each agreement for no less  
95 than 1 year and, upon request, make each agreement available for  
96 inspection by law enforcement.

97 (h) Who is required to comply with s. 327.395, unless such



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98 person presents to the livery the documentation required by s.  
99 327.395(2) for the operation of a vessel or meets the exemption  
100 provided under s. 327.395(6) (f).

101 (i) Who is under 18 years of age.

102 (j) Unless the livery first obtains and carries in full  
103 force and effect a policy from a licensed insurance carrier in  
104 this state which insures the livery and renter against any  
105 accident, loss, injury, property damage, or other casualty  
106 caused by or resulting from the operation of the vessel. The  
107 insurance policy must provide coverage of at least \$500,000 per  
108 person and \$1 million per event. The livery and renter shall  
109 have proof of such insurance available for inspection at the  
110 location where the livery's vessels are being leased or rented,  
111 or offered for lease or rent, and shall provide to each renter  
112 the insurance carrier's name and address and the insurance  
113 policy number.

114 (4) Notwithstanding the person's age or any exemptions  
115 provided in s. 327.395, any person delivering instruction  
116 regarding the safe operation of vessels or pre-rental or pre-  
117 ride instruction in accordance with subsection (3) must have  
118 successfully completed a boating safety education course  
119 approved by the National Association of State Boating Law  
120 Administrators and this state.

121 (5) A person who receives instruction regarding the safe  
122 operation of vessels or pre-rental or pre-ride instruction in  
123 accordance with subsection (3) must provide the livery with a  
124 signed form attesting to each component of the instruction.

125 (a) The commission shall establish by rule the content of  
126 the form.



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127 (b) The form must be signed by the individual providing the  
128 instruction.

129 (c) The livery shall maintain the form for no less than 90  
130 days and, upon request, make the form available for inspection  
131 by law enforcement.

132 ~~(2) A livery may not knowingly lease, hire, or rent a~~  
133 ~~vessel to a person who is required to comply with s. 327.395~~  
134 ~~unless such person presents to the livery the documentation~~  
135 ~~required by s. 327.395(2) for the operation of a vessel or meets~~  
136 ~~the exemption provided under s. 327.395(6)(f).~~

137 (6)(3) If a vessel rented or leased by a livery is  
138 unnecessarily overdue more than 1 hour after the contracted  
139 vessel rental time has expired, the livery must shall notify law  
140 enforcement and the United States Coast Guard the proper  
141 authorities.

142 (7) If a vessel rented or leased by a livery is involved in  
143 an accident, the livery must, as applicable under s. 327.301,  
144 report the accident.

145 (8) A livery shall make its facilities and records  
146 available for inspection upon request by law enforcement no  
147 later than 24 hours after receiving notice from law enforcement.

148 (9) (a) A person who violates this section other than  
149 subsection (2), but who has not been convicted of a violation of  
150 this section within the past 3 years, commits a misdemeanor of  
151 the second degree, punishable as provided in s. 775.082 or s.  
152 775.083.

153 (b) Unless the stricter penalties in paragraph (c) apply, a  
154 person who violates this section other than subsection (2)  
155 within 3 years after a previous conviction of a violation of



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156 this section commits a misdemeanor of the first degree,  
157 punishable as provided in s. 775.082 or s. 775.083, with a  
158 minimum mandatory fine of \$500.

159 (c) A person who violates this section other than  
160 subsection (2) within 5 years after two previous convictions for  
161 a violation of this section commits a misdemeanor of the first  
162 degree, punishable as provided in s. 775.082 or s. 775.083, with  
163 a minimum mandatory fine of \$1,000.

164 (10) A person who commits more than one violation of this  
165 section, other than subsection (2), within a 3-year period may  
166 not act as a livery during a 90-day period immediately after  
167 being charged with that violation. Beginning January 1, 2023,  
168 the commission may revoke or refuse to issue a permit under  
169 subsection (2) based on repeated violations of this section.

170 ~~(4)(a) A livery may not knowingly lease, hire, or rent a~~  
171 ~~personal watercraft to any person who is under 18 years of age.~~

172 ~~(b) A livery may not knowingly lease, hire, or rent a~~  
173 ~~personal watercraft to any person who has not received~~  
174 ~~instruction in the safe handling of personal watercraft, in~~  
175 ~~compliance with rules established by the commission pursuant to~~  
176 ~~chapter 120.~~

177 ~~(c) Any person receiving instruction in the safe handling~~  
178 ~~of personal watercraft pursuant to a program established by rule~~  
179 ~~of the commission must provide the livery with a written~~  
180 ~~statement attesting to the same.~~

181 ~~(5) A livery may not lease, hire, or rent any personal~~  
182 ~~watercraft or offer to lease, hire, or rent any personal~~  
183 ~~watercraft unless the livery first obtains and carries in full~~  
184 ~~force and effect a policy from a licensed insurance carrier in~~



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185 ~~this state, insuring against any accident, loss, injury,~~  
186 ~~property damage, or other casualty caused by or resulting from~~  
187 ~~the operation of the personal watercraft. The insurance policy~~  
188 ~~shall provide coverage of at least \$500,000 per person and \$1~~  
189 ~~million per event. The livery must have proof of such insurance~~  
190 ~~available for inspection at the location where personal~~  
191 ~~watercraft are being leased, hired, or rented, or offered for~~  
192 ~~lease, hire, or rent, and shall provide to each renter the~~  
193 ~~insurance carrier's name and address and the insurance policy~~  
194 ~~number.~~

195 ~~(6) Any person convicted of violating this section commits~~  
196 ~~a misdemeanor of the second degree, punishable as provided in s.~~  
197 ~~775.082 or s. 775.083.~~

198 Section 4. Subsections (1) and (8) of section 327.73,  
199 Florida Statutes, are amended to read:

200 327.73 Noncriminal infractions.—

201 (1) Violations of the following provisions of the vessel  
202 laws of this state are noncriminal infractions:

203 (a) Section 328.46, relating to operation of unregistered  
204 and unnumbered vessels.

205 (b) Section 328.48(4), relating to display of number and  
206 possession of registration certificate.

207 (c) Section 328.48(5), relating to display of decal.

208 (d) Section 328.52(2), relating to display of number.

209 (e) Section 328.54, relating to spacing of digits and  
210 letters of identification number.

211 (f) Section 328.60, relating to military personnel and  
212 registration of vessels.

213 (g) Section 328.72(13), relating to operation with an



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214 expired registration, for which the penalty is:

215 1. For a first or subsequent offense of s. 328.72(13)(a),  
216 up to a maximum of \$100 ~~\$50~~.

217 2. For a first offense of s. 328.72(13)(b), up to a maximum  
218 of \$250.

219 3. For a second or subsequent offense of s. 328.72(13)(b),  
220 up to a maximum of \$500. Any person cited for a noncriminal  
221 infraction under this subparagraph may not have the provisions  
222 of paragraph (4)(a) available to him or her but must appear  
223 before the designated official at the time and location of the  
224 scheduled hearing.

225 (h) Section 327.33(2), relating to careless operation.

226 (i) Section 327.37, relating to water skiing, aquaplaning,  
227 parasailing, and similar activities.

228 (j) Section 327.44, relating to interference with  
229 navigation.

230 (k) Violations relating to boating-restricted areas and  
231 speed limits:

232 1. Established by the commission or by local governmental  
233 authorities pursuant to s. 327.46.

234 2. Speed limits established pursuant to s. 379.2431(2).

235 (l) Section 327.48, relating to regattas and races.

236 (m) Section 327.50(1) and (2), relating to required safety  
237 equipment, lights, and shapes.

238 (n) Section 327.65, relating to muffling devices.

239 (o) Section 327.33(3)(b), relating to a violation of  
240 navigation rules:

241 1. That does not result in an accident; or

242 2. That results in an accident not causing serious bodily



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243 injury or death, for which the penalty is:

244 a. For a first offense, up to a maximum of \$500 ~~\$250~~.

245 b. For a second offense, up to a maximum of \$1,000 ~~\$750~~.

246 c. For a third or subsequent offense, up to a maximum of  
247 \$1,500 ~~\$1,000~~.

248 (p) Section 327.39(1), (2), (3), and (5), relating to  
249 personal watercraft.

250 (q) Section 327.53(1), (2), (3), and (8), relating to  
251 marine sanitation.

252 (r) Section 327.53(4), (5), and (7), relating to marine  
253 sanitation, and s. 327.60, relating to no-discharge zones, for  
254 which the civil penalty is \$250.

255 (s) Section 327.395, relating to boater safety education.  
256 However, a person cited for violating the requirements of s.  
257 327.395 relating to failure to have required proof of boating  
258 safety education in his or her possession may not be convicted  
259 if, before or at the time of a county court hearing, the person  
260 produces proof of the boating safety education identification  
261 card or temporary certificate for verification by the hearing  
262 officer or the court clerk and the identification card or  
263 temporary certificate was valid at the time the person was  
264 cited.

265 (t) Section 327.52(3), relating to operation of overloaded  
266 or overpowered vessels.

267 (u) Section 327.331, relating to divers-down warning  
268 devices, except for violations meeting the requirements of  
269 s. 327.33.

270 (v) Section 327.391(1), relating to the requirement for an  
271 adequate muffler on an airboat.



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272 (w) Section 327.391(3), relating to the display of a flag  
273 on an airboat.

274 (x) Section 253.04(3)(a), relating to carelessly causing  
275 seagrass scarring, for which the civil penalty upon conviction  
276 is:

277 1. For a first offense, \$100 ~~\$50~~.

278 2. For a second offense occurring within 12 months after a  
279 prior conviction, \$250.

280 3. For a third offense occurring within 36 months after a  
281 prior conviction, \$500.

282 4. For a fourth or subsequent offense occurring within 72  
283 months after a prior conviction, \$1,000.

284 (y) Section 327.45, relating to protection zones for  
285 springs, for which the penalty is:

286 1. For a first offense, \$100 ~~\$50~~.

287 2. For a second offense occurring within 12 months after a  
288 prior conviction, \$250.

289 3. For a third offense occurring within 36 months after a  
290 prior conviction, \$500.

291 4. For a fourth or subsequent offense occurring within 72  
292 months after a prior conviction, \$1,000.

293 (z) Section 327.4108, relating to the anchoring of vessels  
294 in anchoring limitation areas, for which the penalty is:

295 1. For a first offense, up to a maximum of \$100 ~~\$50~~.

296 2. For a second offense, up to a maximum of \$250 ~~\$100~~.

297 3. For a third or subsequent offense, up to a maximum of  
298 \$500 ~~\$250~~.

299 (aa) Section 327.4107, relating to vessels at risk of  
300 becoming derelict on waters of this state, for which the civil





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301 penalty is:

302 1. For a first offense, \$100.

303 2. For a second offense occurring 30 days or more after a  
304 first offense, \$250.

305 3. For a third or subsequent offense occurring 30 days or  
306 more after a previous offense, \$500.

307

308 A vessel that is the subject of three or more violations issued  
309 pursuant to the same paragraph of s. 327.4107(2) within an 18-  
310 month period which result in dispositions other than acquittal  
311 or dismissal shall be declared to be a public nuisance and  
312 subject to ss. 705.103(2) and (4) and 823.11(3). The commission,  
313 an officer of the commission, or a law enforcement agency or  
314 officer specified in s. 327.70 may relocate, remove, or cause to  
315 be relocated or removed such public nuisance vessels from waters  
316 of this state. The commission, an officer of the commission, or  
317 a law enforcement agency or officer acting pursuant to this  
318 paragraph upon waters of this state shall be held harmless for  
319 all damages to the vessel resulting from such relocation or  
320 removal unless the damage results from gross negligence or  
321 willful misconduct as these terms are defined in s. 823.11.

322 (bb) Section 327.4109, relating to anchoring or mooring in  
323 a prohibited area, for which the penalty is:

324 1. For a first offense, up to a maximum of \$100 ~~\$50~~.

325 2. For a second offense, up to a maximum of \$250 ~~\$100~~.

326 3. For a third or subsequent offense, up to a maximum of  
327 \$500 ~~\$250~~.

328 (cc) Section 327.463(4) (a) and (b), relating to vessels  
329 creating special hazards, for which the penalty is:



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330           1. For a first offense, \$100 ~~\$50~~.

331           2. For a second offense occurring within 12 months after a  
332 prior offense, \$250 ~~\$100~~.

333           3. For a third offense occurring within 36 months after a  
334 prior offense, \$500 ~~\$250~~.

335           (dd) Section 327.371, relating to the regulation of human-  
336 powered vessels.

337           ~~(ee) Section 328.03, relating to an improper transfer of~~  
338 ~~title, for which the penalty is up to a maximum of \$500.~~

339           ~~(ff) Section 328.48(9), relating to the failure to update~~  
340 ~~vessel registration information, for which the penalty is up to~~  
341 ~~a maximum of \$500.~~

342

343 Any person cited for a violation of ~~any provision of~~ this  
344 subsection shall be deemed to be charged with a noncriminal  
345 infraction, shall be cited for such an infraction, and shall be  
346 cited to appear before the county court. The civil penalty for  
347 any such infraction is \$100 ~~\$50~~, except as otherwise provided in  
348 this section. Any person who fails to appear or otherwise  
349 properly respond to a uniform boating citation ~~shall~~, in  
350 addition to the charge relating to the violation of the boating  
351 laws of this state, must be charged with the offense of failing  
352 to respond to such citation and, upon conviction, be guilty of a  
353 misdemeanor of the second degree, punishable as provided in s.  
354 775.082 or s. 775.083. A written warning to this effect shall be  
355 provided at the time such uniform boating citation is issued.

356           (8) All fees and civil penalties assessed and collected  
357 pursuant to this section shall be remitted by the clerk of the  
358 court to the Department of Revenue to be deposited into the



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359 Marine Resources Conservation Trust Fund for boating safety  
360 education or law enforcement purposes.

361 Section 5. Subsection (1) of section 327.731, Florida  
362 Statutes, is amended, and subsection (4) is added to that  
363 section, to read:

364 327.731 Mandatory education for violators.-

365 (1) A person convicted of a criminal violation under this  
366 chapter, convicted of a noncriminal infraction under this  
367 chapter if the infraction resulted in a reportable boating  
368 accident, or convicted of two noncriminal infractions as  
369 specified in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(y),  
370 the said infractions occurring within a 12-month period, must:

371 (a) Enroll in, attend, and successfully complete, at his or  
372 her own expense, a classroom or online boating safety course  
373 that is approved by and meets the minimum standards established  
374 by commission rule;

375 (b) File with the commission within 90 days proof of  
376 successful completion of the course; ~~and~~

377 (c) Refrain from operating a vessel until he or she has  
378 filed proof of successful completion of the course with the  
379 commission; and

380 (d) Pay a fine of \$500. The clerk of the court shall remit  
381 all fines assessed and collected under this paragraph to the  
382 Department of Revenue to be deposited into the Marine Resources  
383 Conservation Trust Fund to support law enforcement activities.

384 (4) The commission shall maintain a program to ensure  
385 compliance with the mandatory boating safety education  
386 requirements under this section. This program must:

387 (a) Track any citations resulting in a conviction under



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388 this section and the disposition of such citations.

389 (b) Send specific notices to each person subject to the  
390 requirement for mandatory boating safety education.

391 Section 6. Subsection (3) of section 328.03, Florida  
392 Statutes, is amended to read:

393 328.03 Certificate of title required.—

394 (3) A person may ~~shall~~ not sell, assign, or transfer a  
395 vessel titled by the state without delivering to the purchaser  
396 or transferee a valid certificate of title with an assignment on  
397 it showing the transfer of title to the purchaser or transferee.  
398 A person may ~~shall~~ not purchase or otherwise acquire a vessel  
399 required to be titled by the state without obtaining a  
400 certificate of title for the vessel in his or her name. The  
401 purchaser or transferee shall, within 30 days after a change in  
402 vessel ownership, file an application for a title transfer with  
403 the county tax collector. An additional \$10 fee must ~~shall~~ be  
404 charged against the purchaser or transferee if he or she files a  
405 title transfer application after the 30-day period. The county  
406 tax collector may ~~shall be entitled to~~ retain \$5 of the  
407 additional amount. Any person who does not properly transfer  
408 title of a vessel pursuant to this chapter is subject to the  
409 penalties provided in s. 327.73(1)(ee).

410 Section 7. Effective July 1, 2023, subsection (4) of  
411 section 328.03, Florida Statutes, as amended by chapter 2019-76,  
412 Laws of Florida, is amended to read:

413 328.03 Certificate of title required.—

414 (4) An additional \$10 fee shall be charged against the  
415 purchaser or transferee if he or she files a title transfer  
416 application after the 30-day period. The county tax collector



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417 may shall be entitled to retain \$5 of the additional amount. Any  
418 person who does not properly transfer title of a vessel pursuant  
419 to this chapter is subject to the penalties provided in s.  
420 327.73(1)(ee).

421 Section 8. Paragraph (a) of subsection (1) and subsection  
422 (4) of section 328.48, Florida Statutes, are amended, and  
423 subsection (9) is added to that section, to read:

424 328.48 Vessel registration, application, certificate,  
425 number, decal, duplicate certificate.—

426 (1) (a) The owner of each vessel required by this law to pay  
427 a registration fee and secure an identification number shall  
428 file an application with the county tax collector. The  
429 application must shall provide the owner's name and physical  
430 residential or business address; residency status; personal or  
431 business identification; and a complete description of the  
432 vessel, and must shall be accompanied by payment of the  
433 applicable fee required in s. 328.72. An individual applicant  
434 must provide a valid driver license or identification card  
435 issued by this state or another state or a valid passport. A  
436 business applicant must provide a federal employer  
437 identification number, if applicable, verification that the  
438 business is authorized to conduct business in this the state, or  
439 a Florida city or county business license or number.  
440 Registration is not required for any vessel that is not used on  
441 the waters of this state. Upon receipt of an application from a  
442 live-aboard vessel owner whose primary residence is the vessel,  
443 the commission may authorize such owner to provide a post office  
444 box address in lieu of a physical residential or business  
445 address.



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446           (4) Each certificate of registration issued must ~~shall~~  
447 state among other items the numbers awarded to the vessel, the  
448 hull identification number, the name and physical residential or  
449 business address of the owner, and a description of the vessel,  
450 except that certificates of registration for vessels constructed  
451 or assembled by the owner registered for the first time must  
452 ~~shall~~ state all the foregoing information except the hull  
453 identification number. The numbers must ~~shall~~ be placed on each  
454 side of the forward half of the vessel in such position as to  
455 provide clear legibility for identification, except, if the  
456 vessel is an airboat, the numbers may be placed on each side of  
457 the rudder. The numbers awarded to the vessel must ~~shall~~ read  
458 from left to right and must ~~shall~~ be in block characters of good  
459 proportion not less than 3 inches in height. The numbers must  
460 ~~shall~~ be of a solid color that ~~which~~ will contrast with the  
461 color of the background and must ~~shall~~ be so maintained as to be  
462 clearly visible and legible; i.e., dark numbers on a light  
463 background or light numbers on a dark background. The  
464 certificate of registration must ~~shall~~ be pocket-sized and must  
465 ~~shall~~ be available for inspection on the vessel for which issued  
466 whenever such vessel is in operation. Upon receipt of an  
467 application from a live-aboard vessel owner whose primary  
468 residence is the vessel, the commission may authorize such owner  
469 to provide a post office box address in lieu of a physical  
470 residential address.

471  
472 ===== T I T L E   A M E N D M E N T =====

473 And the title is amended as follows:

474           Delete lines 51 - 52



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475 and insert:  
476 residential or business address; providing that a  
477 person who fails to

By Senator Garcia

37-00535A-22

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1 A bill to be entitled  
 2 An act relating to boating safety; providing a short  
 3 title; amending s. 327.30, F.S.; authorizing a court  
 4 to impose a specified fine for certain boating  
 5 collisions and accidents; requiring such fines to be  
 6 deposited into the Marine Resources Conservation Trust  
 7 Fund for specified purposes; defining the terms  
 8 "convicted" and "conviction"; amending s. 327.54,  
 9 F.S.; defining terms; prohibiting liveries, beginning  
 10 on a specified date, from offering a vessel for lease  
 11 or rent without a livery permit; specifying  
 12 requirements and qualifications for the permit;  
 13 authorizing the Fish and Wildlife Conservation  
 14 Commission to adopt rules; providing penalties for  
 15 permit violations; revising the conditions under which  
 16 a livery may not knowingly lease or rent a vessel;  
 17 requiring specified boating safety education courses  
 18 for certain instructors; requiring a person receiving  
 19 safety instruction to provide the livery with a  
 20 specified signed attestation; requiring liveries to  
 21 report certain issues and accidents; requiring  
 22 liveries to make facilities and records available to  
 23 law enforcement upon notice; providing penalties for  
 24 violations and additional penalties for subsequent  
 25 violations; prohibiting violators from operating a  
 26 vessel or acting as a livery for a specified timeframe  
 27 after such a violation; authorizing the commission,  
 28 beginning on a specified date, to revoke or refuse to  
 29 issue permits for repeated violations; amending s.

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

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30 327.73, F.S.; increasing fines for violations of  
 31 certain boating regulations; providing fines for  
 32 improper transfers of title and failures to update  
 33 vessel registration information; authorizing certain  
 34 fees and penalties deposited into the Marine Resources  
 35 Conservation Trust Fund to be used for law enforcement  
 36 purposes; amending s. 327.731, F.S.; imposing a fine  
 37 for persons convicted of certain criminal or  
 38 noncriminal infractions; providing for the deposit of  
 39 such fines into the Marine Resources Conservation  
 40 Trust Fund; requiring the commission to maintain a  
 41 program to ensure compliance with certain boating  
 42 safety education requirements; specifying requirements  
 43 for the program; amending s. 328.03, F.S.; providing  
 44 that an improper transfer of vessel title is subject  
 45 to a civil penalty; amending s. 328.48, F.S.;  
 46 requiring that the address provided in a vessel  
 47 registration application and a certificate of  
 48 registration be a physical residential or business  
 49 address; authorizing the commission to accept post  
 50 office box addresses in lieu of the physical  
 51 residential or business address under certain  
 52 circumstances; providing that a person who fails to  
 53 update his or her vessel registration information  
 54 within a specified timeframe is subject to a civil  
 55 penalty; providing an appropriation to, and  
 56 authorizing positions for, the commission to create an  
 57 Illegal Boating Strike Team; providing the duties of  
 58 the strike team; providing additional appropriations

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



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59 to the commission and authorizing a position for a  
60 specified purpose; providing effective dates.

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

64 Section 1. This act may be cited as the "Boating Safety Act  
65 of 2022."

66 Section 2. Subsection (7) is added to section 327.30,  
67 Florida Statutes, to read:

68 327.30 Collisions, accidents, and casualties.-

69 (7) In addition to any other penalty provided by law, a  
70 court may order a person convicted of a violation of this  
71 section or of any rule adopted or order issued by the commission  
72 pursuant to this section to pay an additional fine of up to  
73 \$1,000 per violation, which must be deposited into the Marine  
74 Resources Conservation Trust Fund to be used to enhance state  
75 and local law enforcement activities related to boating  
76 infractions. As used in this subsection, the terms "convicted"  
77 and "conviction" mean any judicial disposition other than  
78 acquittal or dismissal.

79 Section 3. Section 327.54, Florida Statutes, is amended to  
80 read:

81 327.54 Liveries; safety regulations; penalty.-

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

83 (a) "Conviction" means any judicial disposition other than  
84 acquittal or dismissal.

85 (b) "Livery" means a person who offers a vessel for use by  
86 another in exchange for any type of consideration when such  
87 person does not also provide the lessee or renter with a

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88 captain, a crew, or any type of staff or personnel to operate,  
89 oversee, maintain, or manage the vessel. A vessel rented or  
90 leased by a livery is a livery vessel as defined in s. 327.02.

91 (c) "Seaworthy" means the vessel and all of its parts and  
92 equipment, including, but not limited to, engines, bilge pumps,  
93 and kill switches, are functional and reasonably fit for their  
94 intended purpose.

95 (2) Beginning on January 1, 2023, a livery may not offer a  
96 vessel for lease or rent without first being issued a no-cost  
97 livery permit by the commission. The permit must be renewed  
98 annually. To qualify for issuance or renewal of a livery permit,  
99 an applicant must provide the commission with a list of all  
100 vessels offered by the livery for lease or rent by another, have  
101 valid insurance pursuant to paragraph (3)(j), have an amount of  
102 United States Coast Guard-approved lawful personal floatation  
103 devices on site sufficient to accommodate the capacity of all  
104 vessels offered by the livery for rent or lease by another, have  
105 on site all safety equipment required by s. 327.50 and the Code  
106 of Federal Regulations sufficient to equip all vessels offered  
107 by the livery for rent or lease by another, and display the  
108 information required by paragraph (3)(f). If, before the annual  
109 renewal of the permit, the information required by this  
110 subsection changes, the livery must provide the commission with  
111 the updated information within 10 days after the change.

112 (a) The commission may adopt rules to implement this  
113 subsection.

114 (b) A person who violates this subsection commits a  
115  misdemeanor of the first degree, punishable as provided in s.  
116  775.082 or s. 775.083.

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117 (3) A livery may not knowingly lease, ~~hire,~~ or rent a  
118 vessel to any person:

119 (a) When the number of persons intending to use the vessel  
120 exceeds the number considered to constitute a maximum safety  
121 load for the vessel as specified on the authorized persons  
122 capacity plate of the vessel.

123 (b) When the horsepower of the motor exceeds the capacity  
124 of the vessel.

125 (c) When the vessel does not contain the ~~required~~ safety  
126 equipment required under s. 327.50.

127 (d) When the vessel is not seaworthy, is a derelict vessel  
128 as defined in s. 823.11, or is at risk of becoming derelict as  
129 provided in s. 327.4107.

130 (e) ~~When the vessel is equipped with a motor of 10~~  
131 ~~horsepower or greater,~~ Unless the livery provides pre-rental  
132 ~~pre-rental or pre-ride pre-ride~~ instruction in compliance with  
133 rules established by the commission. The instruction must  
134 include that includes, but need not be limited to:

- 135 1. Operational characteristics of the vessel to be rented.
- 136 2. Safe vessel operation and vessel right-of-way.
- 137 3. The responsibility of the vessel operator for the safe  
138 and proper operation of the vessel.
- 139 4. Local characteristics of the waterway where the vessel  
140 will be operated, such as navigational hazards, the presence of  
141 boating-restricted areas, and water depths.

142 5. Emergency procedures such as appropriate responses to  
143 capsizing, falls overboard, taking on water, and vessel  
144 accidents.

145

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146 ~~Any person delivering the information specified in this~~  
147 ~~paragraph must have successfully completed a boater safety~~  
148 ~~course approved by the National Association of State Boating Law~~  
149 ~~Administrators and this state.~~

150 (f) Unless the livery displays boating safety information  
151 in a place visible to the renting public. The commission shall  
152 prescribe by rule, pursuant to chapter 120, the contents and  
153 size of the boating safety information to be displayed.

154 (g) Unless the livery has a written agreement with the  
155 renter or lessee. The written agreement must include a list of  
156 the names, addresses, and dates of birth for all persons who  
157 will be aboard the vessel, as well as the time the vessel is  
158 required to be returned to the livery or another specified  
159 location and an emergency contact name, address, and telephone  
160 number. The livery shall maintain each agreement for no less  
161 than 1 year and, upon request, make each agreement available for  
162 inspection by law enforcement.

163 (h) Who is required to comply with s. 327.395, unless such  
164 person presents to the livery the documentation required by s.  
165 327.395(2) for the operation of a vessel or meets the exemption  
166 provided under s. 327.395(6)(f).

167 (i) Who is under 18 years of age.

168 (j) Unless the livery first obtains and carries in full  
169 force and effect a policy from a licensed insurance carrier in  
170 this state which insures the livery against any accident, loss,  
171 injury, property damage, or other casualty caused by or  
172 resulting from the operation of the vessel. The insurance policy  
173 must provide coverage of at least \$500,000 per person and \$1  
174 million per event. The livery shall have proof of such insurance

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175 available for inspection at the location where the livery's  
 176 vessels are being leased or rented, or offered for lease or  
 177 rent, and shall provide to each renter the insurance carrier's  
 178 name and address and the insurance policy number.

179 (4) Notwithstanding the person's age or any exemptions  
 180 provided in s. 327.395, any person delivering instruction  
 181 regarding the safe operation of vessels or pre-rental or pre-  
 182 ride instruction in accordance with subsection (3) must have  
 183 successfully completed a boating safety education course  
 184 approved by the National Association of State Boating Law  
 185 Administrators and this state.

186 (5) A person who receives instruction regarding the safe  
 187 operation of vessels or pre-rental or pre-ride instruction in  
 188 accordance with subsection (3) must provide the livery with a  
 189 signed form attesting to each component of the instruction.

190 (a) The commission shall establish by rule the content of  
 191 the form.

192 (b) The form must be signed by the individual providing the  
 193 instruction.

194 (c) The livery shall maintain the form for no less than 90  
 195 days and, upon request, make the form available for inspection  
 196 by law enforcement.

197 ~~(2) A livery may not knowingly lease, hire, or rent a~~  
 198 ~~vessel to a person who is required to comply with s. 327.395~~  
 199 ~~unless such person presents to the livery the documentation~~  
 200 ~~required by s. 327.395(2) for the operation of a vessel or meets~~  
 201 ~~the exemption provided under s. 327.395(6)(f).~~

202 (6)(3) If a vessel rented or leased by a livery is  
 203 unnecessarily overdue more than 1 hour after the contracted

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204 vessel rental time has expired, the livery must ~~shall~~ notify law  
 205 enforcement and the United States Coast Guard ~~the proper~~  
 206 authorities.

207 (7) If a vessel rented or leased by a livery is involved in  
 208 an accident, the livery must, as applicable under s. 327.301,  
 209 report the accident.

210 (8) A livery shall make its facilities and records  
 211 available for inspection upon request by law enforcement no  
 212 later than 24 hours after receiving notice from law enforcement.

213 (9) (a) A person who violates this section other than  
 214 subsection (2), but who has not been convicted of a violation of  
 215 this section within the past 3 years, commits a misdemeanor of  
 216 the second degree, punishable as provided in s. 775.082 or s.  
 217 775.083.

218 (b) Unless the stricter penalties in paragraph (c) apply, a  
 219 person who violates this section other than subsection (2)  
 220 within 3 years after a previous conviction of a violation of  
 221 this section commits a misdemeanor of the first degree,  
 222 punishable as provided in s. 775.082 or s. 775.083, with a  
 223 minimum mandatory fine of \$500.

224 (c) A person who violates this section other than  
 225 subsection (2) within 5 years after two previous convictions for  
 226 a violation of this section commits a misdemeanor of the first  
 227 degree, punishable as provided in s. 775.082 or s. 775.083, with  
 228 a minimum mandatory fine of \$1,000.

229 (10) A person who commits more than one violation of this  
 230 section, other than subsection (2), within a 3-year period may  
 231 not act as a livery during a 90-day period immediately after  
 232 being charged with that violation. Beginning January 1, 2023,

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233 the commission may revoke or refuse to issue a permit under  
 234 subsection (2) based on repeated violations of this section.  
 235 ~~(4)(a) A livery may not knowingly lease, hire, or rent a~~  
 236 ~~personal watercraft to any person who is under 18 years of age.~~  
 237 ~~(b) A livery may not knowingly lease, hire, or rent a~~  
 238 ~~personal watercraft to any person who has not received~~  
 239 ~~instruction in the safe handling of personal watercraft, in~~  
 240 ~~compliance with rules established by the commission pursuant to~~  
 241 ~~chapter 120.~~  
 242 ~~(c) Any person receiving instruction in the safe handling~~  
 243 ~~of personal watercraft pursuant to a program established by rule~~  
 244 ~~of the commission must provide the livery with a written~~  
 245 ~~statement attesting to the same.~~  
 246 ~~(5) A livery may not lease, hire, or rent any personal~~  
 247 ~~watercraft or offer to lease, hire, or rent any personal~~  
 248 ~~watercraft unless the livery first obtains and carries in full~~  
 249 ~~force and effect a policy from a licensed insurance carrier in~~  
 250 ~~this state, insuring against any accident, loss, injury,~~  
 251 ~~property damage, or other casualty caused by or resulting from~~  
 252 ~~the operation of the personal watercraft. The insurance policy~~  
 253 ~~shall provide coverage of at least \$500,000 per person and \$1~~  
 254 ~~million per event. The livery must have proof of such insurance~~  
 255 ~~available for inspection at the location where personal~~  
 256 ~~watercraft are being leased, hired, or rented, or offered for~~  
 257 ~~lease, hire, or rent, and shall provide to each renter the~~  
 258 ~~insurance carrier's name and address and the insurance policy~~  
 259 ~~number.~~  
 260 ~~(6) Any person convicted of violating this section commits~~  
 261 ~~a misdemeanor of the second degree, punishable as provided in s.~~

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262 ~~775.002 or s. 775.003.~~  
 263 Section 4. Subsections (1) and (8) of section 327.73,  
 264 Florida Statutes, are amended to read:  
 265 327.73 Noncriminal infractions.—  
 266 (1) Violations of the following provisions of the vessel  
 267 laws of this state are noncriminal infractions:  
 268 (a) Section 328.46, relating to operation of unregistered  
 269 and unnumbered vessels.  
 270 (b) Section 328.48(4), relating to display of number and  
 271 possession of registration certificate.  
 272 (c) Section 328.48(5), relating to display of decal.  
 273 (d) Section 328.52(2), relating to display of number.  
 274 (e) Section 328.54, relating to spacing of digits and  
 275 letters of identification number.  
 276 (f) Section 328.60, relating to military personnel and  
 277 registration of vessels.  
 278 (g) Section 328.72(13), relating to operation with an  
 279 expired registration, for which the penalty is:  
 280 1. For a first or subsequent offense of s. 328.72(13)(a),  
 281 up to a maximum of \$100 ~~\$50~~.  
 282 2. For a first offense of s. 328.72(13)(b), up to a maximum  
 283 of \$250.  
 284 3. For a second or subsequent offense of s. 328.72(13)(b),  
 285 up to a maximum of \$500. Any person cited for a noncriminal  
 286 infraction under this subparagraph may not have the provisions  
 287 of paragraph (4)(a) available to him or her but must appear  
 288 before the designated official at the time and location of the  
 289 scheduled hearing.  
 290 (h) Section 327.33(2), relating to careless operation.

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291 (i) Section 327.37, relating to water skiing, aquaplaning,  
292 parasailing, and similar activities.

293 (j) Section 327.44, relating to interference with  
294 navigation.

295 (k) Violations relating to boating-restricted areas and  
296 speed limits:

297 1. Established by the commission or by local governmental  
298 authorities pursuant to s. 327.46.

299 2. Speed limits established pursuant to s. 379.2431(2).

300 (l) Section 327.48, relating to regattas and races.

301 (m) Section 327.50(1) and (2), relating to required safety  
302 equipment, lights, and shapes.

303 (n) Section 327.65, relating to muffling devices.

304 (o) Section 327.33(3) (b), relating to a violation of  
305 navigation rules:

306 1. That does not result in an accident; or

307 2. That results in an accident not causing serious bodily  
308 injury or death, for which the penalty is:

309 a. For a first offense, up to a maximum of \$500 ~~\$250~~.

310 b. For a second offense, up to a maximum of \$1,000 ~~\$750~~.

311 c. For a third or subsequent offense, up to a maximum of  
312 \$1,500 ~~\$1,000~~.

313 (p) Section 327.39(1), (2), (3), and (5), relating to  
314 personal watercraft.

315 (q) Section 327.53(1), (2), (3), and (8), relating to  
316 marine sanitation.

317 (r) Section 327.53(4), (5), and (7), relating to marine  
318 sanitation, and s. 327.60, relating to no-discharge zones, for  
319 which the civil penalty is \$250.

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320 (s) Section 327.395, relating to boater safety education.  
321 However, a person cited for violating the requirements of s.  
322 327.395 relating to failure to have required proof of boating  
323 safety education in his or her possession may not be convicted  
324 if, before or at the time of a county court hearing, the person  
325 produces proof of the boating safety education identification  
326 card or temporary certificate for verification by the hearing  
327 officer or the court clerk and the identification card or  
328 temporary certificate was valid at the time the person was  
329 cited.

330 (t) Section 327.52(3), relating to operation of overloaded  
331 or overpowered vessels.

332 (u) Section 327.331, relating to divers-down warning  
333 devices, except for violations meeting the requirements of  
334 s. 327.33.

335 (v) Section 327.391(1), relating to the requirement for an  
336 adequate muffler on an airboat.

337 (w) Section 327.391(3), relating to the display of a flag  
338 on an airboat.

339 (x) Section 253.04(3) (a), relating to carelessly causing  
340 seagrass scarring, for which the civil penalty upon conviction  
341 is:

342 1. For a first offense, \$100 ~~\$50~~.

343 2. For a second offense occurring within 12 months after a  
344 prior conviction, \$250.

345 3. For a third offense occurring within 36 months after a  
346 prior conviction, \$500.

347 4. For a fourth or subsequent offense occurring within 72  
348 months after a prior conviction, \$1,000.

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349 (y) Section 327.45, relating to protection zones for  
 350 springs, for which the penalty is:  
 351 1. For a first offense, \$100 ~~\$50~~.  
 352 2. For a second offense occurring within 12 months after a  
 353 prior conviction, \$250.  
 354 3. For a third offense occurring within 36 months after a  
 355 prior conviction, \$500.  
 356 4. For a fourth or subsequent offense occurring within 72  
 357 months after a prior conviction, \$1,000.

358 (z) Section 327.4108, relating to the anchoring of vessels  
 359 in anchoring limitation areas, for which the penalty is:  
 360 1. For a first offense, up to a maximum of \$100 ~~\$50~~.  
 361 2. For a second offense, up to a maximum of \$250 ~~\$100~~.  
 362 3. For a third or subsequent offense, up to a maximum of  
 363 \$500 ~~\$250~~.

364 (aa) Section 327.4107, relating to vessels at risk of  
 365 becoming derelict on waters of this state, for which the civil  
 366 penalty is:  
 367 1. For a first offense, \$100.  
 368 2. For a second offense occurring 30 days or more after a  
 369 first offense, \$250.  
 370 3. For a third or subsequent offense occurring 30 days or  
 371 more after a previous offense, \$500.  
 372

373 A vessel that is the subject of three or more violations issued  
 374 pursuant to the same paragraph of s. 327.4107(2) within an 18-  
 375 month period which result in dispositions other than acquittal  
 376 or dismissal shall be declared to be a public nuisance and  
 377 subject to ss. 705.103(2) and (4) and 823.11(3). The commission,

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378 an officer of the commission, or a law enforcement agency or  
 379 officer specified in s. 327.70 may relocate, remove, or cause to  
 380 be relocated or removed such public nuisance vessels from waters  
 381 of this state. The commission, an officer of the commission, or  
 382 a law enforcement agency or officer acting pursuant to this  
 383 paragraph upon waters of this state shall be held harmless for  
 384 all damages to the vessel resulting from such relocation or  
 385 removal unless the damage results from gross negligence or  
 386 willful misconduct as these terms are defined in s. 823.11.

387 (bb) Section 327.4109, relating to anchoring or mooring in  
 388 a prohibited area, for which the penalty is:  
 389 1. For a first offense, up to a maximum of \$100 ~~\$50~~.  
 390 2. For a second offense, up to a maximum of \$250 ~~\$100~~.  
 391 3. For a third or subsequent offense, up to a maximum of  
 392 \$500 ~~\$250~~.

393 (cc) Section 327.463(4) (a) and (b), relating to vessels  
 394 creating special hazards, for which the penalty is:  
 395 1. For a first offense, \$100 ~~\$50~~.  
 396 2. For a second offense occurring within 12 months after a  
 397 prior offense, \$250 ~~\$100~~.  
 398 3. For a third offense occurring within 36 months after a  
 399 prior offense, \$500 ~~\$250~~.

400 (dd) Section 327.371, relating to the regulation of human-  
 401 powered vessels.

402 (ee) Section 328.03, relating to an improper transfer of  
 403 title, for which the penalty is up to a maximum of \$500.  
 404 (ff) Section 328.48(9), relating to the failure to update  
 405 vessel registration information, for which the penalty is up to  
 406 a maximum of \$500.

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407  
 408 Any person cited for a violation of ~~any provision~~ of this  
 409 subsection shall be deemed to be charged with a noncriminal  
 410 infraction, shall be cited for such an infraction, and shall be  
 411 cited to appear before the county court. The civil penalty for  
 412 any such infraction is \$100 ~~\$50~~, except as otherwise provided in  
 413 this section. Any person who fails to appear or otherwise  
 414 properly respond to a uniform boating citation ~~shall~~, in  
 415 addition to the charge relating to the violation of the boating  
 416 laws of this state, must be charged with the offense of failing  
 417 to respond to such citation and, upon conviction, be guilty of a  
 418 misdemeanor of the second degree, punishable as provided in s.  
 419 775.082 or s. 775.083. A written warning to this effect shall be  
 420 provided at the time such uniform boating citation is issued.

421 (8) All fees and civil penalties assessed and collected  
 422 pursuant to this section shall be remitted by the clerk of the  
 423 court to the Department of Revenue to be deposited into the  
 424 Marine Resources Conservation Trust Fund for boating safety  
 425 education or law enforcement purposes.

426 Section 5. Subsection (1) of section 327.731, Florida  
 427 Statutes, is amended, and subsection (4) is added to that  
 428 section, to read:

429 327.731 Mandatory education for violators.—

430 (1) A person convicted of a criminal violation under this  
 431 chapter, convicted of a noncriminal infraction under this  
 432 chapter if the infraction resulted in a reportable boating  
 433 accident, or convicted of two noncriminal infractions as  
 434 specified in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(y),  
 435 the said infractions occurring within a 12-month period, must:

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436 (a) Enroll in, attend, and successfully complete, at his or  
 437 her own expense, a classroom or online boating safety course  
 438 that is approved by and meets the minimum standards established  
 439 by commission rule;

440 (b) File with the commission within 90 days proof of  
 441 successful completion of the course; ~~and~~

442 (c) Refrain from operating a vessel until he or she has  
 443 filed proof of successful completion of the course with the  
 444 commission; and

445 (d) Pay a fine of \$500. The clerk of the court shall remit  
 446 all fines assessed and collected under this paragraph to the  
 447 Department of Revenue to be deposited into the Marine Resources  
 448 Conservation Trust Fund to support law enforcement activities.

449 (4) The commission shall maintain a program to ensure  
 450 compliance with the mandatory boating safety education  
 451 requirements under this section. This program must:

452 (a) Track any citations resulting in a conviction under  
 453 this section and the disposition of such citations.

454 (b) Send specific notices to each person subject to the  
 455 requirement for mandatory boating safety education.

456 Section 6. Subsection (3) of section 328.03, Florida  
 457 Statutes, is amended to read:

458 328.03 Certificate of title required.—

459 (3) A person may ~~shall~~ not sell, assign, or transfer a  
 460 vessel titled by the state without delivering to the purchaser  
 461 or transferee a valid certificate of title with an assignment on  
 462 it showing the transfer of title to the purchaser or transferee.  
 463 A person may ~~shall~~ not purchase or otherwise acquire a vessel  
 464 required to be titled by the state without obtaining a

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465 certificate of title for the vessel in his or her name. The  
 466 purchaser or transferee shall, within 30 days after a change in  
 467 vessel ownership, file an application for a title transfer with  
 468 the county tax collector. An additional \$10 fee ~~must shall~~ be  
 469 charged against the purchaser or transferee if he or she files a  
 470 title transfer application after the 30-day period. The county  
 471 tax collector ~~may shall be entitled to~~ retain \$5 of the  
 472 additional amount. Any person who does not properly transfer  
 473 title of a vessel pursuant to this chapter is subject to the  
 474 penalties provided in s. 327.73(1)(ee).

475 Section 7. Effective July 1, 2023, subsection (4) of  
 476 section 328.03, Florida Statutes, as amended by chapter 2019-76,  
 477 Laws of Florida, is amended to read:

478 328.03 Certificate of title required.—

479 (4) An additional \$10 fee shall be charged against the  
 480 purchaser or transferee if he or she files a title transfer  
 481 application after the 30-day period. The county tax collector  
 482 ~~may shall be entitled to~~ retain \$5 of the additional amount. Any  
 483 person who does not properly transfer title of a vessel pursuant  
 484 to this chapter is subject to the penalties provided in s.  
 485 327.73(1)(ee).

486 Section 8. Paragraph (a) of subsection (1) and subsection  
 487 (4) of section 328.48, Florida Statutes, are amended, and  
 488 subsection (9) is added to that section, to read:

489 328.48 Vessel registration, application, certificate,  
 490 number, decal, duplicate certificate.—

491 (1)(a) The owner of each vessel required by this law to pay  
 492 a registration fee and secure an identification number shall  
 493 file an application with the county tax collector. The

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494 application ~~must shall~~ provide the owner's name and physical  
 495 residential or business address; residency status; personal or  
 496 business identification; and a complete description of the  
 497 vessel, and ~~must shall~~ be accompanied by payment of the  
 498 applicable fee required in s. 328.72. An individual applicant  
 499 must provide a valid driver license or identification card  
 500 issued by this state or another state or a valid passport. A  
 501 business applicant must provide a federal employer  
 502 identification number, if applicable, verification that the  
 503 business is authorized to conduct business in this the state, or  
 504 a Florida city or county business license or number.  
 505 Registration is not required for any vessel that is not used on  
 506 the waters of this state. Upon receipt of an application from a  
 507 live-aboard vessel owner, the commission may authorize such  
 508 owner to provide a post office box address in lieu of a physical  
 509 residential or business address so long as he or she has not  
 510 been convicted of a criminal offense under this chapter or  
 511 chapter 327.

512 (4) Each certificate of registration issued ~~must shall~~  
 513 state among other items the numbers awarded to the vessel, the  
 514 hull identification number, the name and physical residential or  
 515 business address of the owner, and a description of the vessel,  
 516 except that certificates of registration for vessels constructed  
 517 or assembled by the owner registered for the first time ~~must~~  
 518 ~~shall~~ state all the foregoing information except the hull  
 519 identification number. The numbers ~~must shall~~ be placed on each  
 520 side of the forward half of the vessel in such position as to  
 521 provide clear legibility for identification, except, if the  
 522 vessel is an airboat, the numbers may be placed on each side of



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523 the rudder. The numbers awarded to the vessel ~~must shall~~ read  
 524 from left to right and ~~must shall~~ be in block characters of good  
 525 proportion not less than 3 inches in height. The numbers ~~must~~  
 526 ~~shall~~ be of a solid color ~~that which~~ will contrast with the  
 527 color of the background and ~~must shall~~ be so maintained as to be  
 528 clearly visible and legible; i.e., dark numbers on a light  
 529 background or light numbers on a dark background. The  
 530 certificate of registration ~~must shall~~ be pocket-sized and ~~must~~  
 531 ~~shall~~ be available for inspection on the vessel for which issued  
 532 whenever such vessel is in operation. Upon receipt of an  
 533 application from a live-aboard vessel owner, the commission may  
 534 authorize such owner to provide a post office box address in  
 535 lieu of a physical residential address so long as he or she has  
 536 not been convicted of a criminal offense under this chapter or  
 537 chapter 327.

538 (9) A person who does not update his or her vessel  
 539 registration information with the county tax collector within 6  
 540 months after a change to the information is subject to the  
 541 penalties provided in s. 327.73(1) (ff).

542 Section 9. For the 2022-2023 fiscal year, the sum of \$2  
 543 million in recurring funds is appropriated from the General  
 544 Revenue Fund to the Fish and Wildlife Conservation Commission  
 545 and 7 full-time equivalent positions with associated salary rate  
 546 of 322,763 are authorized to create an Illegal Boating Strike  
 547 Team for the purpose of coordinating law enforcement at the  
 548 federal, state, and local levels to increase public safety and  
 549 decrease boating accidents, injuries, fatalities, and criminal  
 550 activity. In areas where illegal charters and illegal liveries  
 551 are found to be operating, the strike team shall do all of the

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552 following:

553 (1) Enhance law enforcement activities by increasing  
 554 intergovernmental coordination to address any criminal conduct  
 555 or safety violations, taxes and fees, and licensure regulations  
 556 by such charter and livery operations.

557 (2) Address unsafe customer pick-ups and drop-offs.

558 (3) Improve signage and set appropriate speed limits in  
 559 waterways.

560 (4) Ensure that correct and current information is used for  
 561 vessel registration.

562 (5) Publicize existing reporting systems and use social  
 563 media to encourage citizens to report illegal activities.

564 (6) Develop educational campaigns to address and deter  
 565 illegal charter operations, illegal livery operations, boating  
 566 under the influence, and related public safety issues and to  
 567 encourage the reporting of boating violations.

568 Section 10. For the 2022-2023 fiscal year, the sum of  
 569 \$100,000 in recurring funds from the General Revenue Fund is  
 570 appropriated to the Fish and Wildlife Conservation Commission  
 571 and one full-time equivalent position with associated salary  
 572 rate of 60,000 is authorized to implement the amendment made to  
 573 s. 327.731, Florida Statutes, by this act relating to ensuring  
 574 compliance with mandatory boating safety education requirements.

575 Section 11. For the 2022-2023 fiscal year, the sum of  
 576 \$125,000 in nonrecurring funds from the General Revenue Fund is  
 577 appropriated to the Fish and Wildlife Conservation Commission  
 578 for the purpose of implementing the livery permitting  
 579 requirement in s. 327.54(2), Florida Statutes.

580 Section 12. Except as otherwise expressly provided in this

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581 act, this act shall take effect July 1, 2022.

1-26-22

Meeting Date

# The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

606

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Jess M. McCarty, Executive Assistant County Attorney Phone 305-979-7110

Address 111 NW 1st Street Email jmm2@miamidade.gov

Street

Miami

City

FL

State

33128

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

**Miami-Dade County**

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)*

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

---

BILL: SB 832

INTRODUCER: Senators Stewart and Rodrigues

SUBJECT: Implementation of the Recommendations of the Blue-Green Algae Task Force

DATE: January 25, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	<b>Favorable</b>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

---

**I. Summary:**

SB 832 requires periodic inspection of onsite sewage treatment and disposal systems (OSTDS) that are not required to have an operating permit. The bill directs the Department of Environmental Protection (DEP) to administer an OSTDS inspection program and to adopt rules that include the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a 10-year period, with priority given to those areas within a priority focus area for springs;
- Minimum standards for a functioning system;
- Requirements for the pumpout or repair of a failing system; and
- Enforcement procedures for an owner’s failure to obtain an inspection of the system or a contractor’s failure to timely report inspection results to the DEP and the system owner.

The bill also requires basin management action plans (BMAPs) to include a prioritized list of spatially focused suites of projects in areas likely to yield maximum pollutant reductions. Each project with a total cost exceeding \$1 million must be monitored to determine if it is working to reduce nutrient pollution or water use, or both, as intended. The bill requires the monitoring assessments to be completed expeditiously and included in each BMAP update.

The DEP may incur additional costs in administering the OSTDS inspection program.

## II. Present Situation:

### Blue-Green Algae Task Force

In 2019, Governor DeSantis directed the DEP to establish a Blue-Green Algae Task Force to expedite reduction of nutrient pollution and cyanobacteria blooms in the state.<sup>1</sup> The task force provides guidance and specific, science-based recommendations to expedite the restoration of water bodies that have been adversely affected by cyanobacteria blooms.<sup>2</sup> The task force has focused on source identification, nutrient reduction and remediation efforts, algal toxins and human health effects, and innovative technologies for the prevention, cleanup, and mitigation of harmful algal blooms.<sup>3</sup>

### Onsite Sewage Treatment and Disposal Systems

OSTDSs, commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.<sup>4</sup> Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.<sup>5</sup>

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<sup>1</sup> State of Florida, Office of the Governor, *Executive Order Number 19-12 (2019)*, available at [https://www.flgov.com/wp-content/uploads/orders/2019/EO\\_19-12.pdf](https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf); DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Jan. 3, 2022).

<sup>2</sup> Department of Environmental Protection (DEP), *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Jan. 4, 2022); U.S. Environmental Protection Agency (EPA), *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 4, 2022) (showing the graphic provided in the analysis).

<sup>5</sup> *Id.*



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.<sup>6</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>7</sup> For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.<sup>8</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>9</sup>

In 2019, the Blue-Green Algae Task Force made the following recommendations relating to OSTDSs:

- The DEP should develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health;
- More post-permitting septic tank inspections should take place;
- Protections for vulnerable areas in the state should be expanded; and
- Additional funding is needed to accelerate septic to sewer conversions.<sup>10</sup>

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to the DEP.<sup>11</sup> The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency

<sup>6</sup> *Id.*

<sup>7</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).

<sup>11</sup> DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Jan. 4, 2022).

agreement.<sup>12</sup> Per the agreement, the DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of the DEP instead of the DOH.<sup>13</sup> The county departments of health will still handle permitting and inspection of OSTDS.<sup>14</sup> In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.<sup>15</sup>

### **Water Quality and Nutrients**

Phosphorous and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.<sup>16</sup> The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive amounts can cause significant water quality problems.

Phosphorous and nitrogen are derived from natural and human-made sources. Natural sources include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.<sup>17</sup>

### **Total Maximum Daily Loads**

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.<sup>18</sup> Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired.<sup>19</sup> Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.<sup>20</sup>

### **Basin Management Action Plans**

The DEP is the lead agency in coordinating the development and implementation of TMDLs.<sup>21</sup> BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs are plans

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<sup>12</sup> DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf>.

<sup>13</sup> *Id.* at 14.

<sup>14</sup> *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 5, 2022).

<sup>15</sup> DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, 11 (June 30, 2021), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf>.

<sup>16</sup> EPA, *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Jan. 4, 2022).

<sup>17</sup> *Id.*

<sup>18</sup> DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Jan. 3, 2022).

<sup>19</sup> Section 403.067(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

that address the entire pollution load, including point and nonpoint discharges,<sup>22</sup> for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.<sup>23</sup>

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.<sup>24</sup> Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.<sup>25</sup> BMAPs are adopted by secretarial order.<sup>26</sup>

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the BMAP must be made as appropriate.<sup>27</sup>

In 2019, the Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds;
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies;
- Develop a more targeted approach to project selection; and
- Evaluate project effectiveness through monitoring.<sup>28</sup>

### III. Effect of Proposed Changes:

The bill contains whereas clauses that acknowledge the following:

- Governor DeSantis created the Blue-Green Algae Task Force to improve water quality for the benefit of all Floridians;

<sup>22</sup> Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources.

<sup>23</sup> Section 403.067(7), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

<sup>26</sup> Section 403.067(7)(a)5., F.S.

<sup>27</sup> Section 403.067(7)(a)6., F.S.

<sup>28</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1, 2-4* (Oct. 11, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf).



- The task force has issued recommendations for BMAPs, agriculture, human waste, stormwater, technology, public health, and science;
- The Clean Waterways Act of 2020 implemented many of the recommendations of the task force; and
- The full implementation of the task force’s recommendations will require enactment of additional substantive legislation.

**Section 1** amends s. 381.0065, F.S., to require periodic inspections for OSTDS, excluding systems required to have an operating permit, once every five years, to assess the fundamental operational condition of the system, prolong the life of the system, and identify any failure within the system. The bill provides that this requirement is effective July 1, 2025.

The bill requires the DEP to administer an OSTDS inspection program, to implement program standards, procedures, and requirements, and to adopt rules that must include, at a minimum, all of the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a ten-year period, with first priority given to those areas within a priority focus area for springs identified by the DEP;
- Minimum standards for a functioning system;
- Requirements for the pumpout or repair of a failing system; and
- Enforcement procedures for failure of a system owner to obtain an inspection and failure of a contractor to timely report inspection results to the DEP and the system owner.

**Section 2** amends s. 403.067, F.S., which governs establishment and implementation of TMDLs. The bill requires that a new or revised BMAP must include a list that identifies and prioritizes spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

The bill requires that for each project listed with a total cost exceeding \$1 million, the DEP must assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. The bill provides that the assessments must be completed expeditiously and included in each BMAP update.

**Section 3** provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEP may incur additional costs in administering the onsite sewage treatment and disposal system inspection program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 403.067.

**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 Stewart

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1 A bill to be entitled  
 2 An act relating to implementation of the  
 3 recommendations of the Blue-Green Algae Task Force;  
 4 amending s. 381.0065, F.S.; requiring owners of  
 5 certain onsite sewage treatment and disposal systems  
 6 to have the systems periodically inspected, beginning  
 7 on a specified date; requiring the Department of  
 8 Environmental Protection to administer the inspection  
 9 program; requiring the department to implement program  
 10 standards, procedures, and requirements; providing for  
 11 rulemaking; amending s. 403.067, F.S.; requiring new  
 12 or revised basin management action plans to include a  
 13 list that identifies and prioritizes certain spatially  
 14 focused projects; requiring the department to assess  
 15 certain projects; providing an effective date.

16  
 17 WHEREAS, Governor Ron DeSantis created the Blue-Green Algae  
 18 Task Force in 2019 to "improve water quality for the benefit of  
 19 all Floridians," and the task force's consensus report was  
 20 issued in October 2019, with multiple recommendations for basin  
 21 management action plans (BMAP), agriculture, human waste,  
 22 stormwater, technology, public health, and science, and

23 WHEREAS, the Legislature recognizes that in June 2020,  
 24 Governor DeSantis signed Senate Bill 712, the Clean Waterways  
 25 Act, which implemented many of the recommendations of the task  
 26 force, and

27 WHEREAS, full implementation of the task force's  
 28 recommendations will require enactment of additional substantive  
 29 legislation, NOW, THEREFORE,

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30  
 31 Be It Enacted by the Legislature of the State of Florida:

32  
 33 Section 1. Present subsections (5), (6), and (7) of section  
 34 381.0065, Florida Statutes, are redesignated as subsections (6),  
 35 (7), and (8), respectively, and a new subsection (5) is added to  
 36 that section, to read:

37 381.0065 Onsite sewage treatment and disposal systems;  
 38 regulation.—

39 (5) PERIODIC INSPECTIONS.—Effective July 1, 2025, the owner  
 40 of an onsite sewage treatment and disposal system, excluding a  
 41 system required to have an operating permit, must have the  
 42 system inspected at least once every 5 years to assess the  
 43 fundamental operational condition of the system, prolong the  
 44 life of the system, and identify any failure within the system.  
 45 The department shall administer an onsite sewage treatment and  
 46 disposal system inspection program for such periodic  
 47 inspections. The department shall implement the program  
 48 standards, procedures, and requirements and adopt rules that  
 49 must include, at a minimum, all of the following:

50 (a) A schedule for a 5-year inspection cycle.

51 (b) A county-by-county implementation plan phased in over a  
 52 10-year period, with first priority given to those areas within  
 53 a priority focus area for springs identified by the department.

54 (c) Minimum standards for a functioning system.

55 (d) Requirements for the pumpout or repair of a failing  
 56 system.

57 (e) Enforcement procedures for failure of a system owner to  
 58 obtain an inspection of the system and failure of a contractor

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59 to timely report inspection results to the department and the  
60 system owner.

61 Section 2. Paragraph (a) of subsection (7) of section  
62 403.067, Florida Statutes, is amended to read:

63 403.067 Establishment and implementation of total maximum  
64 daily loads.—

65 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
66 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

67 (a) *Basin management action plans.*—

68 1. In developing and implementing the total maximum daily  
69 load for a water body, the department, or the department in  
70 conjunction with a water management district, may develop a  
71 basin management action plan that addresses some or all of the  
72 watersheds and basins tributary to the water body. Such plan  
73 must integrate the appropriate management strategies available  
74 to the state through existing water quality protection programs  
75 to achieve the total maximum daily loads and may provide for  
76 phased implementation of these management strategies to promote  
77 timely, cost-effective actions as provided for in s. 403.151.  
78 The plan must establish a schedule implementing the management  
79 strategies, establish a basis for evaluating the plan's  
80 effectiveness, and identify feasible funding strategies for  
81 implementing the plan's management strategies. The management  
82 strategies may include regional treatment systems or other  
83 public works, when appropriate, and voluntary trading of water  
84 quality credits to achieve the needed pollutant load reductions.

85 2. A basin management action plan must equitably allocate,  
86 pursuant to paragraph (6)(b), pollutant reductions to individual  
87 basins, as a whole to all basins, or to each identified point

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88 source or category of nonpoint sources, as appropriate. For  
89 nonpoint sources for which best management practices have been  
90 adopted, the initial requirement specified by the plan must be  
91 those practices developed pursuant to paragraph (c). When  
92 appropriate, the plan may take into account the benefits of  
93 pollutant load reduction achieved by point or nonpoint sources  
94 that have implemented management strategies to reduce pollutant  
95 loads, including best management practices, before the  
96 development of the basin management action plan. The plan must  
97 also identify the mechanisms that will address potential future  
98 increases in pollutant loading.

99 3. The basin management action planning process is intended  
100 to involve the broadest possible range of interested parties,  
101 with the objective of encouraging the greatest amount of  
102 cooperation and consensus possible. In developing a basin  
103 management action plan, the department shall assure that key  
104 stakeholders, including, but not limited to, applicable local  
105 governments, water management districts, the Department of  
106 Agriculture and Consumer Services, other appropriate state  
107 agencies, local soil and water conservation districts,  
108 environmental groups, regulated interests, and affected  
109 pollution sources, are invited to participate in the process.  
110 The department shall hold at least one public meeting in the  
111 vicinity of the watershed or basin to discuss and receive  
112 comments during the planning process and shall otherwise  
113 encourage public participation to the greatest practicable  
114 extent. Notice of the public meeting must be published in a  
115 newspaper of general circulation in each county in which the  
116 watershed or basin lies at least 5 days, but not more than 15

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117 days, before the public meeting. A basin management action plan  
 118 does not supplant or otherwise alter any assessment made under  
 119 subsection (3) or subsection (4) or any calculation or initial  
 120 allocation.

121 4.a. Each new or revised basin management action plan must  
 122 ~~shall~~ include:

123 (I)a- The appropriate management strategies available  
 124 through existing water quality protection programs to achieve  
 125 total maximum daily loads, which may provide for phased  
 126 implementation to promote timely, cost-effective actions as  
 127 provided for in s. 403.151;

128 (II)b- A description of best management practices adopted  
 129 by rule;

130 (III)e- A list of projects in priority ranking with a  
 131 planning-level cost estimate and estimated date of completion  
 132 for each listed project;

133 (IV) A list that identifies and prioritizes spatially  
 134 focused suites of projects in areas likely to yield maximum  
 135 pollutant reductions;

136 (V)d- The source and amount of financial assistance to be  
 137 made available by the department, a water management district,  
 138 or other entity for each listed project, if applicable; and

139 (VI)e- A planning-level estimate of each listed project's  
 140 expected load reduction, if applicable.

141 b. For each project listed pursuant to this subparagraph  
 142 which has a total cost that exceeds \$1 million, the department  
 143 must assess through integrated and comprehensive monitoring  
 144 whether the project is working to reduce nutrient pollution or  
 145 water use, or both, as intended. These assessments must be

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146 completed expeditiously and included in each basin management  
 147 action plan update.

148 5. The department shall adopt all or any part of a basin  
 149 management action plan and any amendment to such plan by  
 150 secretarial order pursuant to chapter 120 to implement this  
 151 section.

152 6. The basin management action plan must include milestones  
 153 for implementation and water quality improvement, and an  
 154 associated water quality monitoring component sufficient to  
 155 evaluate whether reasonable progress in pollutant load  
 156 reductions is being achieved over time. An assessment of  
 157 progress toward these milestones shall be conducted every 5  
 158 years, and revisions to the plan shall be made as appropriate.  
 159 Revisions to the basin management action plan shall be made by  
 160 the department in cooperation with basin stakeholders. Revisions  
 161 to the management strategies required for nonpoint sources must  
 162 follow the procedures in subparagraph (c)4. Revised basin  
 163 management action plans must be adopted pursuant to subparagraph  
 164 5.

165 7. In accordance with procedures adopted by rule under  
 166 paragraph (9) (c), basin management action plans, and other  
 167 pollution control programs under local, state, or federal  
 168 authority as provided in subsection (4), may allow point or  
 169 nonpoint sources that will achieve greater pollutant reductions  
 170 than required by an adopted total maximum daily load or  
 171 wasteload allocation to generate, register, and trade water  
 172 quality credits for the excess reductions to enable other  
 173 sources to achieve their allocation; however, the generation of  
 174 water quality credits does not remove the obligation of a source

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175 or activity to meet applicable technology requirements or  
 176 adopted best management practices. Such plans must allow trading  
 177 between NPDES permittees, and trading that may or may not  
 178 involve NPDES permittees, where the generation or use of the  
 179 credits involve an entity or activity not subject to department  
 180 water discharge permits whose owner voluntarily elects to obtain  
 181 department authorization for the generation and sale of credits.

182 8. The department's rule relating to the equitable  
 183 abatement of pollutants into surface waters do not apply to  
 184 water bodies or water body segments for which a basin management  
 185 plan that takes into account future new or expanded activities  
 186 or discharges has been adopted under this section.

187 9. In order to promote resilient wastewater utilities, if  
 188 the department identifies domestic wastewater treatment  
 189 facilities or onsite sewage treatment and disposal systems as  
 190 contributors of at least 20 percent of point source or nonpoint  
 191 source nutrient pollution or if the department determines  
 192 remediation is necessary to achieve the total maximum daily  
 193 load, a basin management action plan for a nutrient total  
 194 maximum daily load must include the following:

195 a. A wastewater treatment plan developed by each local  
 196 government, in cooperation with the department, the water  
 197 management district, and the public and private domestic  
 198 wastewater treatment facilities within the jurisdiction of the  
 199 local government, that addresses domestic wastewater. The  
 200 wastewater treatment plan must:

201 (I) Provide for construction, expansion, or upgrades  
 202 necessary to achieve the total maximum daily load requirements  
 203 applicable to the domestic wastewater treatment facility.

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204 (II) Include the permitted capacity in average annual  
 205 gallons per day for the domestic wastewater treatment facility;  
 206 the average nutrient concentration and the estimated average  
 207 nutrient load of the domestic wastewater; a projected timeline  
 208 of the dates by which the construction of any facility  
 209 improvements will begin and be completed and the date by which  
 210 operations of the improved facility will begin; the estimated  
 211 cost of the improvements; and the identity of responsible  
 212 parties.

213  
 214 The wastewater treatment plan must be adopted as part of the  
 215 basin management action plan no later than July 1, 2025. A local  
 216 government that does not have a domestic wastewater treatment  
 217 facility in its jurisdiction is not required to develop a  
 218 wastewater treatment plan unless there is a demonstrated need to  
 219 establish a domestic wastewater treatment facility within its  
 220 jurisdiction to improve water quality necessary to achieve a  
 221 total maximum daily load. A local government is not responsible  
 222 for a private domestic wastewater facility's compliance with a  
 223 basin management action plan unless such facility is operated  
 224 through a public-private partnership to which the local  
 225 government is a party.

226 b. An onsite sewage treatment and disposal system  
 227 remediation plan developed by each local government in  
 228 cooperation with the department, the Department of Health, water  
 229 management districts, and public and private domestic wastewater  
 230 treatment facilities.

231 (I) The onsite sewage treatment and disposal system  
 232 remediation plan must identify cost-effective and financially

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233 feasible projects necessary to achieve the nutrient load  
 234 reductions required for onsite sewage treatment and disposal  
 235 systems. To identify cost-effective and financially feasible  
 236 projects for remediation of onsite sewage treatment and disposal  
 237 systems, the local government shall:

238 (A) Include an inventory of onsite sewage treatment and  
 239 disposal systems based on the best information available;

240 (B) Identify onsite sewage treatment and disposal systems  
 241 that would be eliminated through connection to existing or  
 242 future central domestic wastewater infrastructure in the  
 243 jurisdiction or domestic wastewater service area of the local  
 244 government, that would be replaced with or upgraded to enhanced  
 245 nutrient-reducing onsite sewage treatment and disposal systems,  
 246 or that would remain on conventional onsite sewage treatment and  
 247 disposal systems;

248 (C) Estimate the costs of potential onsite sewage treatment  
 249 and disposal system connections, upgrades, or replacements; and

250 (D) Identify deadlines and interim milestones for the  
 251 planning, design, and construction of projects.

252 (II) The department shall adopt the onsite sewage treatment  
 253 and disposal system remediation plan as part of the basin  
 254 management action plan no later than July 1, 2025, or as  
 255 required for Outstanding Florida Springs under s. 373.807.

256 10. When identifying wastewater projects in a basin  
 257 management action plan, the department may not require the  
 258 higher cost option if it achieves the same nutrient load  
 259 reduction as a lower cost option. A regulated entity may choose  
 260 a different cost option if it complies with the pollutant  
 261 reduction requirements of an adopted total maximum daily load

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262 and meets or exceeds the pollution reduction requirement of the  
 263 original project.

264 Section 3. This act shall take effect July 1, 2022.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General  
Government

**Subject:** Committee Agenda Request

**Date:** January 11, 2022

---

I respectfully request that **Senate Bill #832**, relating to Implementation of the Recommendations of the Blue-Green Algae Task Force, be placed on the:

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

A handwritten signature in cursive script that reads "Linda Stewart".

---

Senator Linda Stewart  
Florida Senate, District 13



The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1-26-22

Meeting Date

832

Bill Number or Topic

EAG

Committee

Amendment Barcode (if applicable)

Name

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Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

SERRA LUCE FC

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

The Florida Senate

APPEARANCE RECORD

832

1/26/22

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Ag, Env + Green Gov't App.

Committee

Amendment Barcode (if applicable)

Name Lindsay Cross

Phone

Address 1700 N Monroe 11-286

Email

lindsay@fcwaters.org

Street

Tallah

FL

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Conservation Voters

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules. pdf (flsenate.gov)

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The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
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1/24/22  
Meeting Date

SB 832  
Bill Number or Topic

A.S. & AE + GG  
Committee

Amendment Barcode (if applicable)

Name META CALDER

Phone 850-228-5900

Address 3740 RAVINE DR.  
Street

Email meta.calder@gmail.com

TALL FL 32312  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FLORIDA LEAGUE OF WOMEN VOTERS

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/26/22 Meeting Date  
Senate Ag. Approps. Committee

SB 832 Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul Owens

Phone 850-222-6277

Address 308 N. Monroe St. Street

Email

Tallahassee FL 32301 City State Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

1000 Friends of Florida

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: SB 922

INTRODUCER: Senators Perry and Ausley

SUBJECT: Florida Young Farmer and Rancher Matching Grant Program

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 922 establishes the Florida Young Farmer and Rancher Matching Grant Program within the Department of Agriculture and Consumer Services (department) to support startup functions for new farming and ranching operations. To receive a grant, an individual must:

- Be an agricultural producer, be an employee of a farm or ranch, or be an agricultural producer who is a veteran as defined in s. 1.01(14), F.S.;
- Be between the ages of 18 and 35;
- Have operated a farm or ranch for not more than 10 years;
- Demonstrate, at a minimum, a dollar-for dollar matching investment for the grant amount requested; and
- Submit a grant application.

Annual grant funding for the Florida Young Farmer and Rancher Matching Grant Program is contingent upon specific appropriation by the Legislature. The bill requires each grant award to be between \$5,000 and \$20,000, and a recipient may receive only one award each grant period.

For the 2022-2023 fiscal year, the sum of \$500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the department for the purpose of implementing the program.

The bill takes effect July 1, 2022.

**II. Present Situation:**

Opportunities exist within farming and ranching, but beginning farmers and ranchers have unique educational, training, technical assistance, and outreach needs. Capital access, land

access, and access to knowledge and information to assist in ensuring profitability and sustainability are vital to those just entering agriculture and in their first ten years of operation.<sup>1</sup>

Currently, there are no grant programs within the department specifically to assist young farmers and ranchers. The department does provide resources through its Grant Opportunity<sup>2</sup> public webpage.

To address the lack of resources and assistance, the 2018 Legislature created a 12 member Florida Young Farmer and Rancher Advisory Council<sup>3</sup> to provide an opportunity for young people to offer advice, and to give recommendations to the Commissioner of Agriculture about the challenges facing aspiring farmers and ranchers in the early stages of their careers. The council is authorized to examine issues such as access to land, availability of credit and capital, and access to business skills training. The Legislature also directed the department to create the Florida Young Farmer and Rancher Resource Clearinghouse on its website<sup>4</sup> in order to provide career information and resources to young farmers who will be entering a wide range of jobs involving food production, natural resources, plant systems, animal management, and much more.

### III. Effect of Proposed Changes:

**Section 1** creates s. 288.06572, F.S., to establish the Florida Young Farmer and Rancher Matching Grant Program. The bill requires the department to administer grants to foster the creation and expansion of agricultural businesses by young farmers and ranchers in Florida. The department is directed to adopt rules regarding the program. To be eligible, grant recipients must at a minimum:

- Be an agricultural producer, employee of a farm or ranch, or an agricultural producer who is a veteran as defined in s. 1.01(14), F.S.;
- Be at least 18 years of age, but not older than 35 years of age;
- Have operated a farm or ranch for not more than 10 years;
- Demonstrate, at minimum, a dollar-for-dollar matching investment for grant money requested; and
- Submit a grant application during the time period designated by the department.

Each grant award must be between \$5,000 and \$20,000, and a recipient may receive only one award per grant period. Annual grant funding is contingent upon appropriation from the Legislature. For the 2022-2023 fiscal year, the sum of \$500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the department for the purpose of implementing the program.

**Section 2** provides that this act shall take effect July 1, 2022.

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<sup>1</sup> See <https://nifa.usda.gov/program/beginning-farmer-and-rancher-development-program-bfrdp> (Last visited January 12, 2022).

<sup>2</sup> See <https://www.fdacs.gov/Business-Services/Grant-Opportunities> (Last visited January 12, 2022).

<sup>3</sup> Section 570.843, F.S.

<sup>4</sup> See <https://www.fdacs.gov/Education/Preparing-for-Careers-in-Agriculture> (Last visited January 12, 2022).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The department will incur an indeterminate increase in costs relating to workload to implement the grant program.<sup>5</sup> The costs associated with this workload will need to be funded through the overall appropriation for the grant program. For the 2022-2023 fiscal year, the sum of \$500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the department to implement the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>5</sup> Department of Agriculture and Consumer Services, *Senate Bill 922, 2022 Agency Legislative Analysis* (December 8, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

**VIII. Statutes Affected:**

This bill creates section 288.06572 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.

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

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By Senator Perry

8-00892A-22

2022922\_\_

A bill to be entitled

An act relating to the Florida Young Farmer and Rancher Matching Grant Program; creating s. 288.06572, F.S.; creating the program within the Department of Agriculture and Consumer Services; specifying the purpose of grants administered through the program; requiring the department to select grant recipients based on specified criteria; requiring the department to adopt rules; requiring that applicants meet specified eligibility requirements; specifying a range for grant amounts; providing that a recipient may not receive more than one award per year under the program; specifying that grant funding is contingent upon specific annual appropriation by the Legislature; providing an appropriation; providing an effective date.

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

Section 1. Section 288.06572, Florida Statutes, is created to read:

288.06572 Florida Young Farmer and Rancher Matching Grant Program.—

(1) The Florida Young Farmer and Rancher Matching Grant Program is created within the Department of Agriculture and Consumer Services to support the start-up functions associated with new farming and ranching operations.

(a) Grants administered by the Department of Agriculture and Consumer Services through the program must be for the

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

8-00892A-22

2022922\_\_

purpose of fostering the creation and expansion of agricultural businesses by young farmers and ranchers in this state.

(b) The Department of Agriculture and Consumer Services shall select grant recipients based on selection criteria adopted pursuant to subsection (2).

(2) (a) The Department of Agriculture and Consumer Services shall adopt rules governing the operation of the program, including an application process and selection criteria for grant recipients.

(b) At a minimum, in order to be eligible to receive a grant, an individual must meet all of the following requirements:

1. Be an agricultural producer, be an employee of a farm or ranch, or be an agricultural producer who is a veteran as defined in s. 1.01(14).

2. Be at least 18 years of age but not older than 35 years of age.

3. Have operated a farm or ranch for not more than 10 years.

4. Demonstrate, at minimum, a dollar-for-dollar matching investment for the grant amount requested.

5. Submit, on a form prescribed by the Department of Agriculture and Consumer Services, a grant application during the application period established by the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services may designate only one period each year for accepting applications.

(3) Each grant award under the program must be at least \$5,000 but not more than \$20,000, and a grant recipient may not

Page 2 of 3

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

8-00892A-22

2022922\_\_

59 receive more than one award per grant period.

60 (4) Annual grant funding for this program is contingent  
61 upon specific annual appropriation by the Legislature.

62 Section 2. For the 2022-2023 fiscal year, the sum of  
63 \$500,000 in nonrecurring funds is appropriated from the General  
64 Revenue Fund to the Department of Agriculture and Consumer  
65 Services for the purpose of implementing this act.

66 Section 3. This act shall take effect July 1, 2022.



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER NICOLE "NIKKI" FRIED

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December 8, 2021

**Agency Affected:** Dept. of Agriculture and Consumer Services

**Telephone:** 850-617-7000

**Agency Contact:** Carlos Nathan, Legislative Affairs Director

**Telephone:** 850-617-7700

---

**Senate Bill Number:** 922

**Senate Bill Sponsor:** Sen. Perry

**Bill Title:** Florida Young Farmer and Rancher Matching Grant Program

**Effective Date:** 7/1/2022

**Similar Bill(s):** Yes  No

**Similar Bill(s):**

**Identical Bill:** Yes  No

**Identical Bill:** HB 597 by Bell

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## 1. SUMMARY

The proposed bill creates the Florida Young Farmer and Rancher Matching Grant Program within the Florida Department of Agriculture and Consumer Services (FDACS). The grant program is intended to support the start-up functions associated with new farming and ranching operations. The grants awarded would be limited to between \$5,000 and \$20,000 per year contingent on annual appropriation. The bill includes a nonrecurring amount of \$500,000 of funding for 2022-2023. Should this bill pass, the effective date is July 1, 2022. The bill provides the department with rulemaking authority to implement the program and minimum criteria for evaluating applicants. Those requirements are:

- Applicant must be an agriculture producer, a farm/ranch employee, or an agricultural producer who is a veteran;
- Applicant must be between the ages of 18 and 35 years old;
- Applicant must have managed/operated a farm/ranch no more than 10 years;
- Applicant must, at a minimum, match the grant dollar for dollar;
- Applicant must participate and complete the grant application process that FDACS creates.

**2. PRESENT SITUATION**

Currently, the department does not administer a similar grant program.

**3. EFFECT OF PROPOSED CHANGES**

FDACS would be responsible for the creation, administration, and management of this grant program.

**4. FISCAL IMPACT ON FDACS**

	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE	(FY 24- 25) Amount/ FTE
<b>A. Revenues</b>			
Recurring			
Non-Recurring			
<b>TOTAL REVENUES</b>			
<b>B. Expenditures</b>			
Recurring			
Non-Recurring			
<b>TOTAL EXPENDITURES</b>			
<b>C. NET TOTAL</b>			
<b>COMMENTS:</b> Currently, the Florida Department of Agriculture and Consumer Services is unable to estimate a fiscal impact, if any, the proposed bill may have on the department.			

**5. IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?**

No.

**6. IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?**

No.

**7. ARE THERE ESTIMATED TAXES, FEES, OR FINES ASSOCIATED WITH THE PROPOSED BILL?** (If yes, please explain the impact in A and/or B below)

No.

**A. Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.**

**B. Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.**

**C. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

a. Yes:  No:

b. If yes please explain:

The department would be required to adopt rules to implement the new authority, including an application form.

**8. DOES THE PROPOSED BILL REQUIRE THE DEPARTMENT TO PARTICIPATE IN OR PRODUCE ANY REPORTS OR STUDIES?**

a. Yes:  No:

b. If yes please explain:

**9. ARE THERE ANY APPOINTMENTS, CREATION OF, OR CHANGES TO ANY BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. THAT WILL IMPACT THE DEPARTMENT?**

a. Yes:  No:

b. If yes please explain:

**LEGAL ISSUES**

**10. Does the proposed bill conflict with existing federal law or regulations that impact the department? If so, what laws and/or regulations?**

No.

**11. Does the proposed bill raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts) that impacts the department?**

No.

**12. Is the proposed bill likely to generate litigation for the department and, if so, from what interest groups or parties?**

No.

**COMMENTS:**



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** January 17, 2022

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I respectfully request that **Senate Bill #922**, relating to Florida Young Farmer and Rancher Matching Grant Program, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

---

Senator Keith Perry  
Florida Senate, District 8

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: SB 1274

INTRODUCER: Senator Broxson

SUBJECT: Ratification of Rules of the Department of Financial Services

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1274 ratifies Rule 69L-7.020 of the Florida Administrative Code.

The Department of Financial Services has adopted an amendment to Rule 69L-7.020 of the Florida Administrative Code, incorporating by reference the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual (manual). The manual contains reimbursement policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished under the Workers' Compensation statutes. The manual also contains reimbursement policies and payment methodologies for pharmacists and medical suppliers.

The National Council on Compensation Insurance, Inc., estimates that the implementation of the manual will increase workers' compensation system costs by 0.2 percent (eight million dollars). Because the Statement of Estimated Regulatory Costs for this rule exceeds one million dollars within five years of adoption, legislative ratification is required for this rule to become effective, pursuant to section 120.541(3), Florida Statutes.

Adoption of the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will have a recurring financial impact on the workers' compensation expenses of the Division of Risk Management. (*See* section **V. Fiscal Impact.**)

This bill is effective July 1, 2022.



## II. Present Situation:

### Rulemaking Authority and Legislative Ratification

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”<sup>1</sup> Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.<sup>2</sup> An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.<sup>3</sup> The statutory authority for rulemaking must be specific enough to guide an agency’s rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.<sup>4</sup>

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.<sup>5</sup> The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency’s statement of estimated regulatory costs (SERC), if one is prepared.<sup>6</sup>

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.<sup>7</sup>

### *SERC Requirements*

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.<sup>8</sup>

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule’s impact on small businesses, counties, and cities.<sup>9</sup>

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<sup>1</sup> Section 120.52(16), F.S.

<sup>2</sup> Section 120.52(17), F.S.

<sup>3</sup> See ss. 120.52(8) and 120.536, F.S.

<sup>4</sup> See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

<sup>5</sup> See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

<sup>6</sup> Section 120.54(3)(a)1., F.S.

<sup>7</sup> See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

<sup>8</sup> Section 120.541(1)(a), F.S.

<sup>9</sup> Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of one million dollars within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>10</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>11</sup>

If the economic analysis results in an adverse impact or regulatory costs in excess of one million dollars within five years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.<sup>12</sup>

### **Workers' Compensation Maximum Reimbursement Allowances**

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law provides for medically necessary treatment and care of injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel), consisting of the Chief Financial Officer (CFO) or CFO's designee and two Governor's appointees, sets the MRAs.<sup>13</sup> The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;<sup>14</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;<sup>15</sup> and the financial impact of the MRAs on healthcare providers and facilities; Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>16</sup>

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>17</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>18</sup> The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual

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<sup>10</sup> Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>11</sup> Section 120.541(2)(a), F.S.

<sup>12</sup> Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

<sup>13</sup> Section 440.13(12)(a), F.S.

<sup>14</sup> Section 440.13(12)(d)1., F.S.

<sup>15</sup> Section 440.13(12)(d)2., F.S.

<sup>16</sup> Section 440.13(12)(d)3., F.S.

<sup>17</sup> Section 440.13(12)(b)4., F.S.

<sup>18</sup> Section 440.13(12)(b)5., F.S.

and customary charges,<sup>19</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>20</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>21</sup> The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary charge as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.<sup>22</sup> Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.<sup>23</sup> Fees may not exceed the schedules adopted under ch. 440, F.S., and DFS rule.<sup>24</sup>

The Legislature previously ratified Rule 69L-7.020 of the Florida Administrative Code, which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual, providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. The DFS has subsequently adopted amended versions of the rule, incorporating by reference the manual. The NCCI estimates that the manual will increase workers' compensation system costs by 0.2 percent (eight million dollars).<sup>25</sup> According to the SERC, the revisions to the MRAs in the updated manual are projected to result in increased costs to the overall compensation system of eight million dollars over the next five years.<sup>26</sup>

Because the SERC for these rules exceeds one million dollars within five years of adoption, legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

### III. Effect of Proposed Changes:

The bill ratifies Rule 69L-7.020 of the Florida Administrative Code, allowing the rules to go into effect. The bill solely meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rules. The bill provides that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

The effective date is July 1, 2022.

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<sup>19</sup> Section 440.13(12)(b)3., F.S.

<sup>20</sup> Section 440.13(12)(a), F.S.

<sup>21</sup> Section 440.13(12)(a), F.S.

<sup>22</sup> Section 440.13(12)(c), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 440.13(13)(b), F.S. The Department of Financial Services also has broad rulemaking authority under s. 440.591, F.S.

<sup>25</sup> National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021* (Nov. 16, 2020) (on file with the Senate Committee on Banking and Insurance).

<sup>26</sup> Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (Nov. 2021) (on file with the Senate Committee on Banking and Insurance).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The National Council on Compensation Insurance, Inc. (NCCI) estimates the implementation of the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will increase workers' compensation system costs by eight million dollars.<sup>27</sup>

## C. Government Sector Impact:

The Department of Financial Services estimates adoption of the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will have the following recurring financial impact on the workers' compensation expenses of the Division of Risk Management:

- Fiscal Year 2022-23: \$232,400
- Fiscal Year 2023-24: \$235,000
- Fiscal Year 2024-25: \$235,800<sup>28</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Florida Department of Financial Services, *SB 1274 Bill Analysis* (Jan. 11, 2022) (on file with the Senate Committee on Banking and Insurance).

It is anticipated that proposed updates to the Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers and the Florida Workers Compensation Reimbursement Manual for Hospitals will substantially offset this increase in health care provider reimbursement cost.<sup>29</sup>

While the State of Florida may experience a marginal increase in workers' compensation costs, any potential increase will be substantially offset by other factors, including potential reductions in facility reimbursements and lower frequency of worker's compensation claims.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**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.

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

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

By Senator Broxson

1-01657B-22

20221274\_\_

1 A bill to be entitled  
 2 An act relating to ratification of rules of the  
 3 Department of Financial Services; ratifying a  
 4 specified rule relating to the Florida Workers'  
 5 Compensation Health Care Provider Reimbursement  
 6 Manual, for the sole and exclusive purpose of  
 7 satisfying any condition on effectiveness pursuant to  
 8 s. 120.541(3), F.S., which requires ratification of  
 9 any rule meeting any specified thresholds for likely  
 10 adverse impact or increase in regulatory costs;  
 11 providing applicability; providing an effective date.

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

15 Section 1. (1) The following rule is ratified for the sole  
 16 and exclusive purpose of satisfying any condition on  
 17 effectiveness imposed under s. 120.541(3), Florida Statutes:  
 18 Rule 69L-7.020, Florida Administrative Code, titled "Florida  
 19 Workers' Compensation Health Care Provider Reimbursement  
 20 Manual," as filed for adoption with the Department of State  
 21 pursuant to the certification package dated October 22, 2021.

22 (2) This act serves no other purpose and may not be  
 23 codified in the Florida Statutes. After this act becomes a law,  
 24 its enactment and effective dates shall be noted in the Florida  
 25 Administrative Code, the Florida Administrative Register, or  
 26 both, as appropriate. This act does not alter rulemaking  
 27 additions delegated by prior law, does not constitute  
 28 legislative preemption of or exception to any provision of law  
 29 governing adoption or enforcement of the rule cited, and is

Page 1 of 2

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

1-01657B-22

20221274\_\_

30 intended to preserve the status of any cited rule as a rule  
 31 under chapter 120, Florida Statutes. This act does not cure any  
 32 rulemaking defect or preempt any challenge based on a lack of  
 33 authority or a violation of the legal requirements governing the  
 34 adoption of any rule cited.

35 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



## Department of Financial Services (DFS) 2022 Legislative Bill Analysis

### BILL INFORMATION

Bill Number:	1274
Bill Title:	An act relating to ratification of rules of the DFS
Bill Sponsor:	Broxson
Effective Date:	July 1, 2022

### ANALYSIS INFORMATION

Agency Contact:	Austin Stowers, Legislative Affairs Director, (850) 413-5939
Division Director:	Tanner Holloman
Program Analyst:	Andrew Sabolic
Analysis Date:	January 12, 2021

### POLICY ANALYSIS

#### I. SUMMARY ANALYSIS

This bill ratifies Rule 69L-7.020, F.A.C. titled "Florida Workers' Compensation Health Care Provider Reimbursement Manual," as filed for adoption with the Department of State pursuant to the certification package dated October 22, 2021.

#### II. PRESENT SITUATION

Pursuant to paragraph 440.13(12)(b), F.S., physicians are reimbursed 110% of Medicare rates for various professional services and non-surgical procedures and 140% of Medicare rates for surgical procedures. The Three-Member Panel must also approve updates to schedules of maximum reimbursement allowances. The 2016 edition of the Health Care Provider Reimbursement Manual has been in effect since July 1, 2017 and incorporates the 2016 Medicare values. Subsequent editions of the Health Care Provider Reimbursement Manuals have not been ratified. National studies indicate Florida has one of the lowest reimbursement rates for physicians treating workers' compensation patients.

#### III. EFFECT OF PROPOSED CHANGES

This edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual, which is subject to ratification, incorporates Medicare's 2020 Conversion Factor and Relative Values. The National Council on Compensation Insurance estimates an increase of approximately \$8 million in overall physician reimbursements or an increase in overall workers' compensation costs of 0.2%.

#### IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

Y  N

If yes, explain:	
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C.):	

**V. DOES THE BILL REQUIRE REPORTS OR STUDIES?**

Y  N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.?**

Y  N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**

Y  N

Revenues:	
Expenditures:	Local governments may experience a marginal increase in workers' compensation costs. However, any potential increase will be substantially offset by other factors, including potential reductions in facility reimbursements and lower frequency of worker's compensation claims.

**II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**

Y  N

Revenues:	
Expenditures:	The State of Florida may experience a marginal increase in workers' compensation costs. However, any potential increase will be substantially offset by other factors, including potential reductions in facility reimbursements and lower frequency of worker's compensation claims.



Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

Note: The Division of Risk Management is responsible for paying health care providers who treat state workers that receive medical treatment related to a workers' compensation injury. The estimates are increases expected for the Division of Risk Management for the Florida Workers' Compensation Health Care Provider Reimbursement Manual.

Estimates were calculated by multiplying the Division of Risk Management's estimated workers' compensation expenses for the FYs 2022-23 through 2024-25 based on the most recent Revenue Estimating Conference in December 2021 by NCCI's estimated increase in workers' compensation system costs. The amounts listed are recurring costs, with incremental increases included in subsequent fiscal years. Below is the detailed estimated impact to the Division of Risk Management:

	<i>NCCI's Estimated WC System Impact</i>	<i>FY 22-23</i>	<i>FY 23-24</i>	<i>FY 24-25</i>
<i>Health Care Provider Reimbursement Manual</i>	<i>.2%</i>	<i>\$232,400</i>	<i>\$235,000</i>	<i>\$235,800</i>

It is anticipated that proposed updates to the Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers and the Florida Workers Compensation Reimbursement Manual for Hospitals will substantially offset this increase in health care provider reimbursement cost.

**III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N**

Revenues:	
Expenditures:	Private employers may experience a marginal increase in workers' compensation costs. However, any potential increase will be substantially offset by other factors, including potential reductions in facility reimbursements and lower frequency of worker's compensation claims.
Other:	

**IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**I. DOES THE BILL IMPACT THE DEPARTMENT’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
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**FEDERAL IMPACT**

**I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y  N

If yes, describe the anticipated impact including any fiscal impact.	
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**ADDITIONAL COMMENTS**

**LEGAL - GENERAL COUNSEL’S OFFICE REVIEW**

Issues/concerns/comments:	<p>A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No</p> <p>B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No</p> <p>C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? No, the proposed legislation is not likely to generate litigation involving the Department.</p> <p>D. Rules: The proposed legislation does not require the Department to promulgate a new rule, amend an existing rule, or eliminate an existing rule.</p>
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The Florida Senate

APPEARANCE RECORD

1/26/22

Meeting Date

1274

Bill Number or Topic

App. on Agriculture, Env. & General Gov

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Austin Stowers

Phone

850 413 5939

Address

200 E Gaines St.

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Street

Tallahassee

FL

32399

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

CFO Jimmy Patronis

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf](#) [flsenate.gov](#)

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: SB 1400

INTRODUCER: Senator Burgess

SUBJECT: Land Acquisition Trust Fund

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Rogers</u>	<u>EN</u>	<u>Favorable</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1400 amends section 375.041, Florida Statutes, regarding the Land Acquisition Trust Fund, to provide an annual appropriation in the amount of \$20 million to the Department of Environmental Protection (DEP) to implement the Heartland Headwaters Protection and Sustainability Act (act).

The funds must be used to enter into financial assistance agreements and distributed in accordance with the projects identified in the heartland headwaters annual report submitted to the Legislature to finance the cost of designing or constructing projects that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida.

The distribution must be reduced by an amount equal to the debt service paid on bonds issued after July 1, 2022, for these purposes.

The bill also contains legislative findings regarding the enactment and purposes of the act, findings from the Central Florida Water Initiative and its Regional Water Supply Plan, and the need for consistent funding support to implement the act.

**II. Present Situation:**

**Polk Regional Water Cooperative**

The Polk Regional Water Cooperative (PRWC) was created in 2016 through an Interlocal Agreement and consists of Polk County and 15 municipal member governments.<sup>1</sup> It was formed to provide for regional cooperation on the development and delivery of water resources to meet

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<sup>1</sup> Southwest Florida Water Management District (SWFWMD), *Consolidated Annual Report (March 1, 2021)*, 7-1, available at <https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/2021-Consolidated-Annual-Report-Approved.pdf> (last visited Jan. 12, 2022).

future water demands within Polk County. The majority of the PRWC jurisdiction is located within the district's Southern Water Use Caution Area (SWUCA), while the entirety of its jurisdiction is located within the Central Florida Water Initiative (CFWI) planning area.<sup>2</sup>

### **The Southern Water Use Caution Area**

The SWUCA was established in 1992, by the Southwest Florida Water Management District (SWFWMD), in response to growing water demands from public supply, agriculture, mining, power generation, and recreational uses and environmental concerns related to these groundwater withdrawals.<sup>3</sup> It encompasses approximately 5,100 square miles, including all of DeSoto, Hardee, Manatee, and Sarasota counties, and parts of Charlotte, Highlands, Hillsborough, and Polk counties.<sup>4</sup>

In 2006, the SWFWMD adopted the SWUCA Recovery Strategy<sup>5</sup> that has four main goals:

- Achieve minimum flows in the upper Peace River;
- Achieve minimum lake levels in lakes along the Lake Wales Ridge, which extends roughly 90 miles along the center of the state in Polk and Highlands counties;<sup>6</sup>
- Achieve the saltwater intrusion minimum aquifer level; and
- Ensure water supply needs are met for existing and projected reasonable and beneficial uses.<sup>7</sup>

### **Central Florida Water Initiative**

The CFWI is a collaborative water supply planning effort involving the Department of Environmental Protection (DEP), the St. Johns River Water Management District, the South Florida Water Management District (SFWMD), the SWFWMD, the Department of Agriculture and Consumer Services, regional public water supply utilities, and other stakeholders.<sup>8</sup> These groups have been tasked with addressing the current and long-term water supply needs of Central Florida without causing harm to the water resources and associated natural systems.<sup>9</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Section 373.0363(2)(a), F.S.; SWFWMD, *Southern Water Use Caution Area*, <https://www.swfwmd.state.fl.us/projects/southern-water-use-caution-area> (last visited Jan. 11, 2022).

<sup>4</sup> Section 373.0363(1)(c), F.S.; SWFWMD, *Southern Water Use Caution Area*, <https://www.swfwmd.state.fl.us/projects/southern-water-use-caution-area> (last visited Jan. 11, 2022).

<sup>5</sup> The "Southern Water Use Caution Area Recovery Strategy" is the SWFWMD's planning, regulatory, and financial strategy for ensuring that adequate water supplies are available to meet growing demands while protecting and restoring the water and related natural resources of the area. Section 373.0363(1)(d), F.S.

<sup>6</sup> SWFWMD, *Ridge Lakes Stakeholder Workgroup*, <https://www.swfwmd.state.fl.us/projects/ridge-lakes-stakeholder-workgroup> (last visited Jan. 11, 2022).

<sup>7</sup> SWFWMD, *Southern Water Use Caution Area*, <https://www.swfwmd.state.fl.us/projects/southern-water-use-caution-area> (last visited Jan. 11, 2022).

<sup>8</sup> Section 373.0465(1)(c), F.S. Stakeholders include water utilities, environmental groups, business organizations, agricultural communities, and others.

<sup>9</sup> Section 373.0465(1)(c), F.S.

The CFWI Initiative Area, also known as the CFWI Planning Area, includes Orange, Osceola, Polk, Seminole, and southern Lake counties.<sup>10</sup> It is home to approximately 2.9 million people and supports tourism, agriculture, and an industrial and commercial sector.<sup>11</sup>

The areas encompassed by the CFWI Planning Area have traditionally relied on groundwater from the Floridan aquifer system as their primary source of water.<sup>12</sup> Evaluations predict that fresh groundwater resources alone will be insufficient to meet 2040 projected water demands and currently permitted allocations for withdrawal without resulting in unacceptable impacts to water resources and related natural systems.<sup>13</sup> These impacts can include drying out wetlands, reducing spring flows, lowering lake levels, and degrading groundwater quality from saltwater intrusion.<sup>14</sup> Alternative water sources will need to be developed to meet the projected demands.<sup>15</sup>

**Funding of the PRWC Projects**

According to the Heartland Headwaters Protection and Sustainability Act Annual Comprehensive Water Resources Report (FY 2022-23) (Heartland Report), the projects identified as “Approved” in this table are the most important projects to the PRWC members:

Heartland Headwaters Protection and Sustainability Act Implementation									
Table C - FY 2022-23 Project Cost and Rank									
Priority Ranking*	Project Name	Member Government	Estimated Completion Date	Total Project Cost (All Years)	Total Project Cost (FY 22-23)	State Funding Requested (FY 22-23)	Local Gov. Funding (FY 22-23)	Other Funds (FY 22-23)	
Approved	West Polk Lower Floridan Aquifer Project - Phase II	*PRWC / Lakeland	July 2027	\$ 225,222,000	\$ 8,258,140	\$ 2,752,713	\$ 2,752,713	\$ 2,752,713.33	
Approved	Southeast Wellfield Lower Floridan Aquifer Project - Phase II	*PRWC / Polk County	July 2026	\$ 346,191,000	\$ 12,693,670	\$ 4,231,223	\$ 4,231,223.33	\$ 4,231,223.33	
<b>Subtotal for Projects Submitted to the CFWI</b>				<b>\$ 571,413,000</b>	<b>\$ 20,951,810</b>	<b>\$ 6,983,937</b>	<b>\$ 6,983,937</b>	<b>\$ 6,983,937</b>	
1	Lake Howard Watershed Treatment Enhancement	Winter Haven	2023	\$ 1,500,000	\$ 900,000	\$ 450,000	\$ 450,000	\$ -	
1	Utility System Rehab	Auburndale	May 2023	\$ 500,000	\$ 500,000	\$ 250,000	\$ 250,000	\$ -	
3	Peace Creek Water Preservation Project	Polk County	June 2023	\$ 22,000,000	\$ 10,000,000	\$ 3,000,000	\$ 7,000,000	\$ -	
4	Water Treatment Plant Additional Lime Softening Unit Upgrade Project	Bartow	August 2024	\$ 2,750,000	\$ 1,375,000	\$ 687,500	\$ 687,500	\$ -	
5	Sapphire Necklace Creation	Winter Haven	2024	\$ 3,500,000	\$ 500,000	\$ 250,000	\$ 250,000	\$ -	
6	Headwaters of the Everglades - Water Quality and Wastewater	Polk County	June 2023	\$ 30,000,000	\$ 3,600,000	\$ 1,800,000	\$ 1,800,000	\$ -	
7	Septic to Sewer Program, Remediation Area 6A	Winter Haven	2025	\$ 40,000,000	\$ 4,000,000	\$ 1,500,000	\$ 1,500,000	\$ 1,000,000	
8	Allred Wastewater Treatment Plant Filter Upgrade	Auburndale	May 2023	\$ 750,000	\$ 750,000	\$ 250,000	\$ 500,000	\$ -	
9	Crooked Lake Wastewater Collection System Upgrades	Polk County	June 2025	\$ 1,661,000	\$ 166,100	\$ 83,050	\$ 83,050	\$ -	
10	Road (and Drainage) Improvements	Lake Hamilton	September 2023	\$ 3,200,000	\$ 2,475,000	\$ 1,975,000	\$ 500,000	\$ -	
10	Wastewater Treatment Plant Headworks Rehabilitation Project	Bartow	December 2022	\$ 500,000	\$ 450,000	\$ 225,000	\$ 225,000	\$ -	
10	Wastewater Treatment Plant Solids Management Improvement Project	Bartow	June 2023	\$ 5,750,000	\$ 2,875,000	\$ 1,437,500	\$ 1,437,500	\$ -	
10	Reclaimed-Winter Haven Preserve at Lake Ashton Reclaimed Water	Winter Haven	2024	\$ 1,820,000	\$ 1,820,000	\$ 910,000	\$ 910,000	\$ -	
10	Water Resource Center	Winter Haven	2024	\$ 3,300,000	\$ 3,300,000	\$ 1,500,000	\$ 1,800,000	\$ -	
10	Pollard Road Water Production Facility	Winter Haven	2024	\$ 10,000,000	\$ 3,500,000	\$ 1,750,000	\$ 1,750,000	\$ -	
10	WWTP#3 Expansion	Winter Haven	2026	\$ 160,000,000	\$ 4,000,000	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	
10	ASR Wellfield at WWTP#3	Winter Haven	2024	\$ 6,100,000	\$ 3,000,000	\$ 750,000	\$ 750,000	\$ 1,500,000	
10	Lake May, Lake Shipp Restoration Phase 1	Winter Haven	2023	\$ 30,000,000	\$ 9,500,000	\$ 9,000,000	\$ 500,000	\$ -	
10	ONE Water Peace Creek Development	Winter Haven	2025	\$ 43,000,000	\$ 5,000,000	\$ 2,500,000	\$ 2,500,000	\$ -	
10	Low Impact Development Stormwater Enhancements	Winter Haven	2023	\$ 15,000,000	\$ 15,000,000	\$ 14,000,000	\$ 1,000,000	\$ -	
10	Cypresswood Water Treatment Plant	Winter Haven	2024	\$ 13,000,000	\$ 6,500,000	\$ 3,250,000	\$ 3,250,000	\$ -	
10	Water Treatment Plant Sodium Hypochlorite Conversion Project	Bartow	October 2022	\$ 225,000	\$ 200,000	\$ 25,000	\$ 175,000	\$ -	
10	Wastewater Treatment Plant Sodium Hypochlorite Conversion Project	Bartow	September 2022	\$ 125,000	\$ 75,000	\$ 50,000	\$ 25,000	\$ -	
10	Water Treatment Plant Finished Water Control Valves and Discharge	Bartow	August 2023	\$ 375,000	\$ 325,000	\$ 275,000	\$ 50,000	\$ -	
<b>Subtotal for Non-CFWI Local Projects</b>				<b>\$ 396,056,000</b>	<b>\$ 79,811,100</b>	<b>\$ 46,918,050</b>	<b>\$ 28,393,050</b>	<b>\$ 4,500,000</b>	
<b>TOTAL FOR ALL PRWC MEMBER PROJECTS</b>				<b>\$ 967,469,000</b>	<b>\$ 100,762,910</b>	<b>\$ 53,901,987</b>	<b>\$ 35,376,987</b>	<b>\$ 11,483,937</b>	
<b>NOTES:</b>				<b>Total Project Cost (All Years)</b>		<b>Total Project Cost (FY 21-21)</b>		<b>State Funding Requested (FY 21-22)</b>	
Approved - These are the highest priority projects in the region and funding support for three of these projects is being sought through the Central Florida Water Initiative request submitted by DEP.									
NR - Indicates that these projects are being implemented by the identified local government using their own funds or other non-state matching funds.									
* In many cases, projects received equivalent scores so are ranked equally.									

<sup>10</sup> Section 373.0465(2)(a), F.S.; Central Florida Water Initiative (CFWI), *What is CFWI?*, [https://cfwiwater.com/what\\_is\\_CFWI.html](https://cfwiwater.com/what_is_CFWI.html) (last visited Jan. 10, 2022).

<sup>11</sup> CFWI, *Regional Water Supply Plan 2020 Planning Document*, ii, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Jan. 10, 2022).

<sup>12</sup> CFWI, *Value of Water*, [https://cfwiwater.com/value\\_of\\_water.html](https://cfwiwater.com/value_of_water.html) (last visited Jan. 10, 2022).

<sup>13</sup> CFWI, *Regional Water Supply Plan 2020 Planning Document*, 89-90, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Jan. 10, 2022).

<sup>14</sup> CFWI, *Value of Water*, [https://cfwiwater.com/value\\_of\\_water.html](https://cfwiwater.com/value_of_water.html) (last visited Jan. 10, 2022).

<sup>15</sup> See *id.*

The table above lists the two “Approved” and 24 other local member government projects (there are 26 total), including total project cost, requested state funding, local government funding, and other funding sources.<sup>16</sup> Detailed project descriptions are provided in the Heartland Report.<sup>17</sup>

### **Heartland Headwaters Protection and Sustainability Act**

The Heartland water supply planning region (Heartland Planning Region) covers approximately 2,569 square miles and includes Hardee County and those portions of Polk and Highlands counties within the SWFWMD.<sup>18</sup> The region is underlain by three aquifer systems: the surficial, intermediate, and Floridan; the latter is the primary source of water in the region and in the entire SWFWMD area.<sup>19</sup>

In 2017, the Legislature enacted the Heartland Headwaters Protection and Sustainability Act (act).<sup>20</sup> The purpose of the act was to recognize the critical importance of Polk County’s aquifers to the economic and ecological health of the region as headwaters for six of Florida’s major river systems.<sup>21</sup> The act requires the development of a comprehensive annual report to be completed by the PRWC and submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the DEP, and the water management districts (WMDs) by December 1 of each year.<sup>22</sup> In addition, the act further requires the PRWC to coordinate with the appropriate WMD to provide a status report on projects receiving priority state funding and to include such status report in the consolidated water management district annual report.<sup>23</sup>

### **Land Acquisition Trust Fund**

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per \$100.<sup>24</sup>

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.<sup>25</sup> The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from documentary stamp taxes be deposited into the Land Acquisition Trust

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<sup>16</sup> Polk Regional Water Cooperative, *Heartland Headwaters Protection and Sustainability Act Annual Comprehensive Water Resources Report (FY 2022-23)*, Table C (on file with the Senate Committee on Environment and Natural Resources).

<sup>17</sup> *Id.* at Table B.

<sup>18</sup> SWFWMD, *RWSP Heartland Planning Region*, <https://www.swfwmd.state.fl.us/resources/plans-reports/rwsp/rwsp-heartland-planning-region> (last visited Jan. 22, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> Ch. 2017-111, s. 1, Laws of Fla., codified in ss. 373.462-.463, F.S.

<sup>21</sup> Section 373.462(1)-(6), F.S.

<sup>22</sup> Section 373.463(1)-(2), F.S.

<sup>23</sup> Section 373.463(3), F.S.

<sup>24</sup> See ss. 201.02(1)(a) and 201.08(1)(a), F.S.

<sup>25</sup> The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Jan. 11, 2022).

Fund (LATF).<sup>26</sup> Article X, s. 28 of the Florida Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.<sup>27</sup>

To implement Art. X, s. 28 of the Florida Constitution, the Legislature passed ch. 2015-229, L.O.F. This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within the DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.<sup>28</sup>

Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically:
  - Payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds.
- Then, before funds are authorized to be appropriated for other uses:
  - A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan, or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades restoration projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
    - \$32 million annually through the 2023-2024 fiscal year for the Long-Term Plan;
    - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million annually through the 2025-2026 fiscal year for the CERP; and

<sup>26</sup> *Id.*

<sup>27</sup> FLA. CONST. art. X, s. 28(b)(1).

<sup>28</sup> Ch. 2015-229, ss. 9 and 50, Laws of Fla.



- Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
  - A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for spring restoration, protection, and management projects;
  - \$5 million annually through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka;
  - \$64 million to the Everglades Trust Fund in the 2018-2019 fiscal year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project, and any funds remaining in any fiscal year shall be made available only for Phase II of the C-51 Reservoir Project or projects that implement the CERP, the Long Term Plan, or the NEEPP; and
  - \$50 million annually to the SFWMD for the Lake Okeechobee Watershed Restoration Project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the Florida Constitution.<sup>29</sup>

The General Revenue Estimating Conference in August 2021 estimated that for Fiscal Year 2021-2022 a total of \$3.82 billion would be collected in documentary stamp taxes.<sup>30</sup> Thirty-three percent of the net revenues collected, or approximately \$1.26 billion, must be deposited into the LATF in accordance with Art. X, s. 28 of the Florida Constitution. Of that amount, \$136 million is committed to debt service, leaving \$1.12 billion to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.<sup>31</sup>

### ***Litigation***

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.<sup>32</sup> The cases were consolidated and a hearing was held in June of 2018.<sup>33</sup> The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the constitutional language. The circuit court held for the plaintiffs, stating the amendment requires the funds be used for acquiring conservation lands, and for improving, managing, restoring, and enhancing public access to conservation lands acquired after the effective date of the amendment.<sup>34</sup> The decision described how the LATF funds may be used, and ruled numerous appropriations from 2015 and 2016 unconstitutional.<sup>35</sup>

The circuit court decision was appealed and the First District Court of Appeal overturned the circuit court ruling, holding that the LATF funds are not restricted to use on land purchased by

<sup>29</sup> Section 375.041(3)-(4), F.S.

<sup>30</sup> Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results (Aug. 2021)*, available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Jan. 11, 2022).

<sup>31</sup> *Id.*

<sup>32</sup> *Florida Wildlife Federation, Inc. v. Negron*, No. 2015-CA-001423 (Fla. 2nd Cir. Ct.); *Florida Defenders of the Environment, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2nd Cir. Ct.).

<sup>33</sup> *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.* at 7–8.

the state after the constitutional amendment took effect in 2015.<sup>36</sup> The court also held that the plain language in the Constitution authorizing the use of funds for management, restoration, and enhancement activities would specifically authorize use of the funds on activities beyond land acquisition.<sup>37</sup> The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.<sup>38</sup>

On January 3, 2022, the circuit court granted the Defendants motion for summary judgment “because the contested 2015-2016 fiscal year appropriations have expired, no actual controversy remains pending, and the Plaintiff’s causes of action for declaratory judgment are moot.”<sup>39</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill provides the following legislative findings:

- The Legislature unanimously approved CS/CS/HB 573, the Heartland Headwaters Protection and Sustainability Act (act), in 2017, to protect the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers located in the Green Swamp and Polk County, which are some of the most important and vulnerable water resources in the state.
- In the same act, the Legislature declared that it is an important state interest to partner with regional water supply authorities and local governments, in accordance with the water resource and water supply development provisions in state law, to protect the water resources of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and the surrounding areas.
- In 2020, the Central Florida Water Initiative (CFWI) Regional Water Supply Plan (RWSP), which is developed pursuant to state law, projected the population of the region to reach 4.4 million by 2040, which is a 49 percent increase from a 2015 estimate. The total average of surface water and groundwater use in the CFWI Planning Area is projected to increase 36 percent from 667 million gallons per day in 2015 to 908 million gallons per day in 2040.<sup>40</sup>
- The CFWI RWSP concluded that in some areas of the CFWI Planning Area, fresh groundwater is near or has exceeded the limits of groundwater availability and that alternative water sources will need to be developed along with additional water conservation efforts and local management strategies to meet the 2040 projected water demands or currently permitted allocations while allowing currently stressed water resources and natural systems to recover.<sup>41</sup>
- Consistent funding support is required in order to support the efforts of the water management districts to protect the rivers, springs, and wetlands in the region while

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<sup>36</sup> *Oliva v. Florida Wildlife Federation, Inc.*, 1D18-3141 (Fla. 1st Dist. Ct. App.), available at [https://www.1dca.org/content/download/536427/5956785/file/183141\\_1286\\_09092019\\_09211709\\_i.pdf](https://www.1dca.org/content/download/536427/5956785/file/183141_1286_09092019_09211709_i.pdf) (last visited Sept. 23, 2019).

<sup>37</sup> *Id.* at 9-10.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Florida Wildlife Federation, Inc. v. Simpson, et. al.*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. Jan. 3, 2022), available at <https://www.politico.com/states/fl/?id=0000017e-21d8-d3d7-a37f-afdee5cb0000&source=email> (last visited Jan. 11, 2022).

<sup>40</sup> These figures are taken from the Central Florida Water Initiative’s (CFWI’s) *Final 2020 Central Florida Water Initiative Regional Water Supply Plan 2020* (RWSP). See CFWI RWSP, 4, available at [https://cfwiwater.com/pdfs/CFWI\\_2020\\_RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020_RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Jan. 13, 2022).

<sup>41</sup> This conclusion is taken from the CFWI RWSP. *Id.* at v.

providing for responsible development of these water resources to support growth and provide for public health and safety.

**Section 2** amends s. 375.041(3)(b)6., F.S., to provide an annual appropriation of \$20 million to the Department of Environmental Protection to implement the act. These funds must be used to enter into financial assistance agreements and distributed in accordance with the projects identified in the heartland headwaters annual report to the Legislature, to finance the cost of designing or constructing projects that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida. Additionally, the distribution must be reduced by an amount equal to the debt service paid on bonds issued after July 1, 2022, for these purposes.

**Section 3** provides that the bill takes effect July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, s. 28 of the Florida Constitution requires that funds distributed into the Land Acquisition Trust Fund be expended only for the purposes identified in that section. To ensure consistency with the Florida Constitution, the expenditures funded by the bill must fall into one or more of the identified purposes.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The bill provides an annual appropriation of \$20 million from the Land Acquisition Trust Fund to the Department of Environmental Protection to implement the Act. The funds must be used to enter into financial assistance agreements and distributed in accordance with the projects identified in the heartland headwaters annual report submitted to the Legislature pursuant to s. 373.463, F.S., to finance the cost of designing or constructing projects that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida. The distribution must be reduced by an amount equal to the debt service paid on bonds issued after July 1, 2022, for these purposes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 375.041 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 Burgess

20-01308A-22

20221400\_\_

A bill to be entitled

An act relating to the Land Acquisition Trust Fund; providing legislative findings; amending s. 375.041, F.S.; providing an annual appropriation to the Department of Environmental Protection to implement the Heartland Headwaters Protection and Sustainability Act; requiring the funds to be used and distributed for specified purposes; removing an obsolete provision; providing an effective date.

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

Section 1. The Legislature finds that:

(1) The Legislature unanimously approved CS/CS/HB 573, the Heartland Headwaters Protection and Sustainability Act, in 2017, to protect the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers located in the Green Swamp and Polk County, which are some of the most important and vulnerable water resources in this state.

(2) In the same act, the Legislature declared that it is an important state interest to partner with regional water supply authorities and local governments, in accordance with s. 373.705, Florida Statutes, to protect the water resources of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and the surrounding areas.

(3) In 2020, the Central Florida Water Initiative (CFWI) Regional Water Supply Plan developed pursuant to s. 373.0465, Florida Statutes, projected the population of the region to reach 4.4 million by 2040, which is a 49 percent increase from a

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

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20221400\_\_

2015 estimate. The total average of surface water and groundwater use in the CFWI Planning Area is projected to increase 36 percent from 667 million gallons per day in 2015 to 908 million gallons per day in 2040.

(4) The CFWI Regional Water Supply Plan concluded that in some areas of the CFWI Planning Area, fresh groundwater is near or has exceeded the limits of groundwater availability and that alternative water sources will need to be developed along with additional water conservation efforts and local management strategies to meet the 2040 projected water demands or currently permitted allocations while allowing currently stressed water resources and natural systems to recover.

(5) Consistent funding support is required in order to support the efforts of the water management districts to protect the rivers, springs, and wetlands in the region while providing for responsible development of these water resources to support growth and provide for public health and safety.

Section 2. Subsection (3) of section 375.041, Florida Statutes, is amended to read:

375.041 Land Acquisition Trust Fund.—

(3) Funds distributed into the Land Acquisition Trust Fund pursuant to s. 201.15 shall be applied:

(a) First, to pay debt service or to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds issued under s. 215.618; and pay debt service, provide reserves, and pay rebate obligations and other amounts due with respect to Everglades restoration bonds issued under s. 215.619; and

(b) Of the funds remaining after the payments required

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59 under paragraph (a), but before funds may be appropriated,  
60 pledged, or dedicated for other uses:

61 1. A minimum of the lesser of 25 percent or \$200 million  
62 shall be appropriated annually for Everglades projects that  
63 implement the Comprehensive Everglades Restoration Plan as set  
64 forth in s. 373.470, including the Central Everglades Planning  
65 Project subject to Congressional authorization; the Long-Term  
66 Plan as defined in s. 373.4592(2); and the Northern Everglades  
67 and Estuaries Protection Program as set forth in s. 373.4595.  
68 From these funds, \$32 million shall be distributed each fiscal  
69 year through the 2023-2024 fiscal year to the South Florida  
70 Water Management District for the Long-Term Plan as defined in  
71 s. 373.4592(2). After deducting the \$32 million distributed  
72 under this subparagraph, from the funds remaining, a minimum of  
73 the lesser of 76.5 percent or \$100 million shall be appropriated  
74 each fiscal year through the 2025-2026 fiscal year for the  
75 planning, design, engineering, and construction of the  
76 Comprehensive Everglades Restoration Plan as set forth in s.  
77 373.470, including the Central Everglades Planning Project, the  
78 Everglades Agricultural Area Storage Reservoir Project, the Lake  
79 Okeechobee Watershed Project, the C-43 West Basin Storage  
80 Reservoir Project, the Indian River Lagoon-South Project, the  
81 Western Everglades Restoration Project, and the Picayune Strand  
82 Restoration Project. The Department of Environmental Protection  
83 and the South Florida Water Management District shall give  
84 preference to those Everglades restoration projects that reduce  
85 harmful discharges of water from Lake Okeechobee to the St.  
86 Lucie or Caloosahatchee estuaries in a timely manner. For the  
87 purpose of performing the calculation provided in this

Page 3 of 6

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88 subparagraph, the amount of debt service paid pursuant to  
89 paragraph (a) for bonds issued after July 1, 2016, for the  
90 purposes set forth under paragraph (b) shall be added to the  
91 amount remaining after the payments required under paragraph  
92 (a). The amount of the distribution calculated shall then be  
93 reduced by an amount equal to the debt service paid pursuant to  
94 paragraph (a) on bonds issued after July 1, 2016, for the  
95 purposes set forth under this subparagraph.

96 2. A minimum of the lesser of 7.6 percent or \$50 million  
97 shall be appropriated annually for spring restoration,  
98 protection, and management projects. For the purpose of  
99 performing the calculation provided in this subparagraph, the  
100 amount of debt service paid pursuant to paragraph (a) for bonds  
101 issued after July 1, 2016, for the purposes set forth under  
102 paragraph (b) shall be added to the amount remaining after the  
103 payments required under paragraph (a). The amount of the  
104 distribution calculated shall then be reduced by an amount equal  
105 to the debt service paid pursuant to paragraph (a) on bonds  
106 issued after July 1, 2016, for the purposes set forth under this  
107 subparagraph.

108 3. The sum of \$5 million shall be appropriated annually  
109 each fiscal year through the 2025-2026 fiscal year to the St.  
110 Johns River Water Management District for projects dedicated to  
111 the restoration of Lake Apopka. This distribution shall be  
112 reduced by an amount equal to the debt service paid pursuant to  
113 paragraph (a) on bonds issued after July 1, 2016, for the  
114 purposes set forth in this subparagraph.

115 4. The sum of \$64 million is appropriated and shall be  
116 transferred to the Everglades Trust Fund for the 2018-2019

Page 4 of 6

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 117 fiscal year, and each fiscal year thereafter, for the EAA  
 118 reservoir project pursuant to s. 373.4598. Any funds remaining  
 119 in any fiscal year shall be made available only for Phase II of  
 120 the C-51 reservoir project or projects identified in  
 121 subparagraph 1. and must be used in accordance with laws  
 122 relating to such projects. Any funds made available for such  
 123 purposes in a fiscal year are in addition to the amount  
 124 appropriated under subparagraph 1. This distribution shall be  
 125 reduced by an amount equal to the debt service paid pursuant to  
 126 paragraph (a) on bonds issued after July 1, 2017, for the  
 127 purposes set forth in this subparagraph.

128 5. The sum of \$50 million shall be appropriated annually to  
 129 the South Florida Water Management District for the Lake  
 130 Okeechobee Watershed Restoration Project in accordance with s.  
 131 373.4599. This distribution must be reduced by an amount equal  
 132 to the debt service paid pursuant to paragraph (a) on bonds  
 133 issued after July 1, 2021, for the purposes set forth in this  
 134 subparagraph.

135 6. The sum of \$20 million shall be appropriated annually to  
 136 the Department of Environmental Protection to implement the  
 137 Heartland Headwaters Protection and Sustainability Act pursuant  
 138 to chapter 2017-111, Laws of Florida. The funds must be used to  
 139 enter into financial assistance agreements and distributed in  
 140 accordance with the projects identified in the heartland  
 141 headwaters annual report submitted to the Legislature pursuant  
 142 to s. 373.463 to finance the cost of designing or constructing  
 143 projects that protect, restore, or enhance the headwaters of the  
 144 river systems located in the Heartland Region of Central  
 145 Florida. This distribution shall be reduced by an amount equal

20-01308A-22 20221400\_\_  
 146 to the debt service paid pursuant to paragraph (a) on bonds  
 147 issued after July 1, 2022, for the purposes set forth in this  
 148 subparagraph ~~Notwithstanding subparagraph 3., for the 2021-2022~~  
 149 ~~fiscal year, funds shall be appropriated as provided in the~~  
 150 ~~General Appropriations Act. This subparagraph expires July 1,~~  
 151 ~~2022.~~

152 Section 3. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General  
Government

**Subject:** Committee Agenda Request

**Date:** January 19, 2022

---

I respectfully request that **Senate Bill #1400**, relating to Land Acquisition Trust Fund , be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", written over a horizontal line.

Senator Danny Burgess  
Florida Senate, District 20



The Florida Senate

APPEARANCE RECORD

SB 1400

1/26/22

Meeting Date

Bill Number or Topic

Ag + Natural Resource Approp

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Phillip Walker

Phone

863 698-8094

Address

P.O. Box 3739

Email

phillip.walker@lakelandgov.net

Street

Lakeland

FL

33802

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: .

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1-24-22 Meeting Date

1400

Bill Number or Topic

AEC Committee

Amendment Barcode (if applicable)

Name Richard HARRIS Phone 863-514-7671

Address Street Email

Auburn Ave City FLA 33823 State Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate  
**APPEARANCE RECORD**

1400

Meeting Date

AEA

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Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

John Dickson

Phone

863-651-1710

Address

140 North Pointe Dr

Email

Street

Auburndale FL 33803

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

1-26-2022

Meeting Date

ACG

Committee

SB 1400

Bill Number or Topic

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Amendment Barcode (if applicable)

Name CHRISTOPHER REEDER

Phone 863 287 2879

Address 103 COSTA LOOP

Email PINGMAN.CR@GMAIL.COM

Street

AUBURNDALE

FL

33823

City

State

Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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01-26-22

Meeting Date

AEG

Committee

SB 1400

Bill Number or Topic

Amendment Barcode (if applicable)

Name Dorothea Bogert

Phone 863-967-0096

Address 400 Lake Ariana Blvd

Email dtbogert@gmail.com

Street

Aub FL 33823

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1/26/22

# The Florida Senate APPEARANCE RECORD

SB 1400

Meeting Date

AE6

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

JACK MYERS

Phone

863-559-8078

Address

524 Arneson Ave.

Email

JACKMYERSE@TAMPABAY.ORG  
COM

Street

ANBURNDALE, FL

33823

City

State

Zip

Speaking:

For

Against

Information

**OR**

Waive Speaking:

In Support

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without  
compensation or sponsorship.

I am a registered lobbyist,  
representing:

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/26/2022

Meeting Date

SB1400

Bill Number or Topic

AEG

Committee

Amendment Barcode (if applicable)

Name

Jeffrey E. Tillman

Phone

(803) 207-4939

Address

1 Bobby Green Plaza

Email

jtillman@aubumdalefl.com

Street

Aubumdale

FL

State

33823

Zip

City

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

APPEARANCE RECORD

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1/24/22 Meeting Date

SB 1400 Bill Number or Topic

AS on A E & G G Committee

Amendment Barcode (if applicable)

Name META CALDER

Phone 850-228-5900

Address 3740 RAVINE DR. Street

Email metacalder@gmail.com

JAL FL 32312 City State Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FLORIDA LEAGUE OF WOMEN VOTERS

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The Florida Senate

APPEARANCE RECORD

1-26-2022

Meeting Date

APPROPRIATION FOR AGRICULTURE

Committee

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SB 1400 HEARINGS

Bill Number or Topic

SB 1400

Amendment Barcode (if applicable)

Name JACK DEARMIN

Phone 863-291-5270

Address 155 E. PAMELA ST.

Email JOEARMIN@MYLAKEVIEW.COM

Street

LAKE ALFRE FIA 33850

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [X] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[X] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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APPEARANCE RECORD

SB1400

01/26/22

Meeting Date

Bill Number or Topic

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Approps SubC on Ag, Env, + GG

Committee

Amendment Barcode (if applicable)

- Deputy County Mgr - Polk County

Name

Ryan J. Taylor - Exec. Dir. Polk Regional Water Cooperative

Phone

863-500-0773

Address

330 W Church St

Email

ryantaylor@polk-county.net

Street

Barrow

FL

33830

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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APPEARANCE RECORD

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1/20/22  
Meeting Date

SB 1400 HEADLAND  
Bill Number or Topic

APPROPRIATION FOR AGRICULTURE  
Committee

SB 1400  
Amendment Barcode (if applicable)

Name RYAN LEAVELLOU

Phone (863) 291-5270

Address 155 EAST DANELO ST  
Street

Email RL@MILANSEAUFRED.COM

LAKE ALFRED FL 33850  
City State Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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APPEARANCE RECORD

1/26/22

Meeting Date

SB 1400 HEARTLAND

Bill Number or Topic

SB 1400

Amendment Barcode (if applicable)

Approval For Agriculture

Committee

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Name Jake Fulmer

Phone 309-530-1122

Address 150 HANESPORT DR

Email jstevens@msn.com

Street

Lake Arrow, FL 33850

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[X] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

APPEARANCE RECORD

SB1400

1/26

Meeting Date

Bill Number or Topic

Sub AG, Env. GG

Committee

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Amendment Barcode (if applicable)

Name Brad Dantele, Mayor

Phone 843-660-0105

Address 4324 Duck Down Ln

Email B.dantele1@aol.com

Street

Wickto Haven FL 32884

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

# APPEARANCE RECORD

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1/26/2022  
Meeting Date

1400  
Bill Number or Topic

~~AEG~~ AEG  
Committee

Amendment Barcode (if applicable)

Name KEITH CONIE

Phone (883) 662-1132

Address 197 MELISSA TRAIL  
Street

Email KEITH.CONIE@VERIZON

AUBURNHOLE FL 33873  
City State Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

*While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)*

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The Florida Senate

APPEARANCE RECORD

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1/26/22

Meeting Date

1400

Bill Number or Topic

Ag. Env. GG Approvs

Committee

Amendment Barcode (if applicable)

Name Lindsay Cross

Phone

Address 1700 N Monroe 11-286

Email

lindsay@fcvoters.org

Street

Tally

FL

32301

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida conservation voters

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

# APPEARANCE RECORD

1-26-22

Meeting Date

14833

Bill Number or Topic

EAG

Committee

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Amendment Barcode (if applicable)

Name DAVID COLLIER

Phone 941-323-2404

Address 9830 ELM ST  
Street

Email collierasc@orange-fl.com

OK  
City

MD  
State

21842  
Zip

Speaking:  For  Against  Information **OR** Waive Speaking:  In Support  Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

SIERRA LEONE FL

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

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1/26/27

Meeting Date

1400

Bill Number or Topic

AEG

Committee

Amendment Barcode (if applicable)

Name

June Fife

Phone

863-965-5530

Address

1 Bobby Green

Email

June Fife@auburndalefl.com

Street

Auburndale Fl.

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

APPEARANCE RECORD

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01/26/2022

Meeting Date

1400.

Bill Number or Topic

AEG

Committee

Amendment Barcode (if applicable)

Name

William Starling

Phone

863-965-5986

Address

1540 LAKE ANAIA BLVD

Email

wesoh@earthlink.net

Street

Auburndale

FL

33823

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

---

BILL: SB 1402

INTRODUCER: Senator Burgess

SUBJECT: Domestic Surplus Lines Insurance

DATE: January 25, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 1402 allows a domestic insurer possessing surplus as to policyholders of at least \$15 million to be made eligible to transact surplus lines insurance as a domestic surplus lines insurer if approved by the Office of Insurance Regulation.

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted, but are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in section 626.932, Florida Statutes. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and

- Florida Workers' Compensation Guaranty Association.

The bill does not impact state funds or expenditures.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

The general public policy of each state is to require insurers to obtain licensure with, and submit to the regulatory jurisdiction of, that particular state, though the insurer's state of domicile serves as the primary regulator for an insurer. In Florida, this public policy can be observed in s. 624.401, F.S., which requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR). The admitted market refers to insurers that have a certificate of authority to transact insurance in this state issued by the OIR.<sup>1</sup> Thus, such insurers are referred to as "authorized insurers."

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code<sup>2</sup> and the authority of the OIR and the Department of Financial Services (DFS). The Florida Insurance Code establishes various requirements for authorized admitted market insurers. Under the Florida Insurance Code, the OIR generally has authority over authorized insurers regarding insurer solvency and financial strength, insurance policy forms and rates, and the market conduct of insurers. The DFS licenses insurance agents and agencies, conducts the rehabilitation and liquidation of insurers, and provides consumer services.

### Surplus Lines Insurance

However, the states also recognize there are risks for which insurance in the admitted market cannot be procured. Thus, each state allows insurers that do not have a certificate of authority in that state to sell "surplus lines insurance" for such risks on a limited basis if certain requirements are met. Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.<sup>3</sup> In Florida, s. 624.402, F.S., specifies that a certificate of authority is not required of an insurer with respect to lawfully written surplus lines coverage transactions.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,<sup>4</sup> which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.<sup>5</sup> Rather, surplus lines insurers are "unauthorized insurers,"<sup>6</sup> but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida

---

<sup>1</sup> See s. 624.404, F.S.

<sup>2</sup> Section 624.404, F.S., provides that to qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with the Florida Insurance Code.

<sup>3</sup> The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.

<sup>4</sup> Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

<sup>5</sup> Section 624.09(1), F.S.

<sup>6</sup> Section 624.09(2), F.S.

Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.<sup>7</sup> Surplus lines insurers are, however, subject to the requirements of the Unfair Insurance Trade Practices Act.<sup>8</sup>

There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

### **Surplus Lines Law**

Florida's Surplus Lines Law is designed to provide within the state orderly access to insurers unauthorized in Florida, specifically for insurance coverage not procurable from authorized insurers. Section 626.915, F.S., provides four general requirements that must be met for insurance to be exported to a surplus lines insurer:

- The insurance must be eligible for export under s. 626.916, F.S., or s. 626.917, F.S.;
- The insurer must be an eligible surplus lines insurer under s. 626.917, F.S., or s. 626.918, F.S.;
- The insurance must be placed through a licensed Florida Surplus Lines Agent; and
- All other applicable provisions of the Surplus Lines Law must be met.

### ***Eligibility for Export to a Surplus Lines Insurer***

Insurance coverage is eligible to be exported to a surplus lines insurer only if:

- The insurance is not procurable from an authorized insurer after the producing agent has made a diligent effort to place the insurance with an authorized insurer.
  - The surplus lines agent must verify a diligent effort was made by requiring a properly documented statement of diligent effort from the retail or producing agent. A "diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing the same type of coverage and documenting these rejections. However, if a residential structure has a dwelling replacement cost of \$700,000 or more, coverage need only be sought with one such authorized insurer.<sup>9</sup>
- The premium rate for the surplus lines coverage may not be lower than the rate in actual and current use by a majority of authorized insurers for the same coverage on a similar risk.<sup>10</sup>
- The surplus lines coverage may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverage on similar risks.<sup>11</sup>

<sup>7</sup> Section 626.913(4), F.S.

<sup>8</sup> Sections 626.951-626.99, F.S. Under s. 626.9521, F.S., no person may engage in this state in any unfair insurance trade practice. "Person" is defined by s. 626.9511(1), F.S., to mean any individual, corporation, association, partnership...or any entity involved in the business of insurance.

<sup>9</sup> Section 626.914(4), F.S.

<sup>10</sup> Section 626.916(1)(b), F.S.

<sup>11</sup> Section 626.916(1)(c), F.S., the statute contains an exception for a unique policy form designed for use with respect to a particular subject of insurance if certain requirements are met.

- The policy of surplus lines insurance may not provide a deductible that is generally unavailable from authorized insurers; this does not apply to extended coverage for fire insurance or windstorm insurance.<sup>12</sup>

The foregoing do not apply to the following lines of insurance:

- Wet marine and transportation or aviation risks, which are instead subject to s. 626.917, F.S.;
- Classes of insurance which are related to indemnity of deductibles for property insurance or are kinds of insurance and types of commercial lines risks that are subject to s. 627.062(3)(d)1., F.S.;<sup>13</sup> and
- Any class of insurance the Financial Services Commission by rule declares eligible after making a finding that there is not reasonable or adequate market among authorized insurers.<sup>14</sup>

### ***Requirements for Eligibility of Surplus Lines Insurers***

An unauthorized insurer may only be made an eligible surplus lines insurer if the following requirements are met:<sup>15</sup>

- The insurer must currently be an authorized insurer in the state or country of its domicile as to the kinds of insurance it would transact in Florida. Generally, the insurer must transact such insurance for three years in its state of domicile.<sup>16</sup> However, the OIR may waive this requirement if the insurer has capital and surplus of at least \$25 million and either is offering a product not readily available in Florida or has operated successfully for at least the immediately preceding year;
- The OIR must receive a duly authenticated copy of its current annual financial statement;
- The insurer must have and maintain surplus as to policyholders of not less than \$15 million.<sup>17</sup> The \$15 million surplus requirement does not apply to:
  - Insurance exchanges created by the laws of a state if such exchange meets that state's capital and surplus requirements or maintains capital and surplus of at least \$50 million; and
  - A surplus lines insurer that is a member of an insurance holding company that includes a member which is a Florida Domestic insurer, may instead meet the surplus and capital requirements applicable to authorized insurers under s. 624.408, F.S., and must comply with ch. 625, F.S., regarding accounting, investments, and deposits by insurers;

<sup>12</sup> Section 626.916(1)(d), F.S.

<sup>13</sup> Section 626.915(3), F.S. The kinds of insurance and types of commercial lines subject to s. 627.062(3)(d)1., F.S., are excess or umbrella insurance; surety and fidelity insurance; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and Internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multiperil; excess property; burglary and theft; travel insurance if issued as a master group policy with a situs in another state if certain requirements as to premiums are met; medical malpractice for certain facilities; medical malpractice for a health care practitioners that is not a Florida-licensed physician, dentist, chiropractor, podiatrist, pharmacist, or pharmacy technician; and other types of commercial insurance or commercial risks designated by the OIR if the office makes certain determinations.

<sup>14</sup> Section 626.915(2), F.S.

<sup>15</sup> Section 626.918, F.S.

<sup>16</sup> Or be a wholly owned subsidiary of such an insurer.

<sup>17</sup> An alien insurer (domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by the Office of Insurance Regulation (OIR), in an account of at least \$5.4 million.

- The insurer must be of good reputation as to providing service to its policyholders and the payment of losses and claims; and
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.

The foregoing do not apply to an insurer writing wet marine and transportation risks that are not used solely for personal pleasure, family use, or used by the insurer for transportation. Instead the only requirements for eligibility is that the insurer furnishes information indicating the insurer is well able to meet its financial obligation and the coverage is placed by a licensed Florida surplus lines agent.<sup>18</sup>

Notwithstanding these requirements, the Surplus Lines Law specifies that the OIR does not have any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer. The OIR, when determining a surplus lines insurer eligibility, bases such eligibility only on the insurer appearing to be sound financially and have satisfactory claims practices, and that the OIR has no credible evidence to the contrary.<sup>19</sup>

### ***Requirement to Place Surplus Lines Insurance Through a Licensed Florida Surplus Lines Agent***

Surplus lines insurance must be placed with an eligible surplus lines insurer by a licensed Florida surplus lines agent. Licensure as a surplus lines agent may be obtained by a Florida-licensed general lines agent if such agent has at least one year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours<sup>20</sup> in surplus and excess lines and passes a licensure exam. Such licensure is solely for the purpose of placing with surplus lines insurers property, marine, casualty, or surety coverages originated by general lines agents. Licensure as a nonresident surplus lines agent may be obtained by nonresidents licensed in their home state as a resident general lines agent and a surplus lines agent, if the home state has similar licensure requirements as Florida and provides reciprocity regarding residents of Florida obtaining licensure as a nonresident surplus lines agent.<sup>21</sup>

### ***Mandatory Disclosures***

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Act and that surplus lines policy rates and forms are not subject to any Florida regulatory agency.<sup>22</sup> Specifically, the first page of an insurance policy, certificate, cover note, or confirmation of insurance must state:

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA  
SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES  
CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA  
INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT

<sup>18</sup> Section 626.917, F.S.

<sup>19</sup> Section 626.918(4), F.S.

<sup>20</sup> Prelicensure coursework is not required for an applicant who is a member or veteran.

<sup>21</sup> Section 626.9272, F.S.

<sup>22</sup> Section 626.924, F.S.

OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT  
UNLICENSED INSURER.

The first page of surplus lines policies must have the following disclosure:

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE  
NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

When a policy is exported to a surplus lines insurer, the insured must sign or provide documented acknowledgement of the following disclosure:

You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.

*The Florida Surplus Lines Service Office*

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association designed to act as a “self-regulating organization” to permit better access by consumers to approved surplus lines insurers.<sup>23</sup> The FSLSO’s responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.<sup>24</sup> The FSLSO is operated under the supervision of a board of governors.<sup>25</sup> All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with the FSLSO.<sup>26</sup> The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors, and claim adjustment companies.

The Florida Surplus Lines Service Office is required to conduct the following activities:<sup>27</sup>

- Receive, record, and review all surplus lines insurance policies;
- Maintain records of the policies reported to the service office and perform reports as required by the Financial Services Commission;
- Prepare and deliver to each surplus lines agent quarterly reports of each agent’s business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;
  - Collect monthly from each surplus lines agent a service fee of .06 percent,<sup>28</sup> and

<sup>23</sup> Section 626.921(1), F.S.

<sup>24</sup> *See Id.*

<sup>25</sup> Section 626.921(4), F.S.

<sup>26</sup> Section 626.921(2), F.S.

<sup>27</sup> *See generally* s. 626.921(3), F.S.

<sup>28</sup> *See* <https://www.fslso.com/compliance/agent-procedures-manual>, (last visited Jan. 13, 2022). Section 626.921(3)(f), F.S.

The Florida Surplus Lines Service Office is authorized to collect up to .3 percent of total gross premium. The fee is used to pay for the cost of operating the Service Office and is to be paid by the insurer.



- Other activities as specified by statute.

### ***Surplus Lines Tax***

Premiums charged for surplus lines coverages are subject to a premium receipts tax of 4.94 percent of all gross premiums charged for the insurance.<sup>29</sup> The tax is collected from insureds by surplus lines agents who must remit the tax to the FLSO. The FLSO then remits the tax to the DFS. The DFS deposits 8.8 percent of the taxes collected into the Insurance Regulatory Trust Fund and the other 91.2 percent into the General Revenue Fund.

### **Domestic Surplus Lines Insurance**

Historically, surplus lines insurers generally may not write surplus lines insurance in their state of domicile. In recent years, however, some states have enacted laws authorizing the creation of domestic surplus lines insurers, which are surplus lines insurers that offer surplus lines policies in their state of domicile. Prior to the creation of the domestic surplus lines laws, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.<sup>30</sup> A review of the state laws authorizing domestic surplus lines insurers show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

- The domestic insurer must meet a policyholder surplus requirement, usually \$15 million or \$20 million;
- The domestic insurer must be an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile;
- The board of directors of the domestic insurer must pass a resolution seeking to be a domestic lines insurer; and
- The insurance commissioner has made the domestic surplus lines insurer eligible in the state.

Certain commonalities are also present in laws authorizing domestic surplus lines insurers regarding the application of state and federal laws on insurance:

- Domestic surplus lines insurers are subject to the state's solvency requirements for domestic insurers, unless a domestic surplus lines insurer is specifically exempted;
- Domestic surplus lines insurers are exempt from requirements relating to rates, forms, policy cancellation;
- Policies must be placed in accordance with the requirements of the state's surplus lines law; and
- Policies are not covered by any of the state's guaranty associations.

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<sup>29</sup> Section 626.932, F.S.

<sup>30</sup> Arizona (*see* s. 20-407.01, Az. S.), Arkansas (*see* s. 23-65-350, Ar. C.), Connecticut (*see* s. 38a-271a, Ct. S.), Delaware (*see* 18 Del. C. s. 1932), Georgia (*see* 33-5-20.2, Ga. C.), Illinois (*see* 215 Il. C.S 5/445a), Iowa (*see* s. 5151.4A, Ia. C.A.), Louisiana (*see* s. 22:436.1, La. R.S.), Missouri (*see* s. 384.018, V.A.M.S), Nebraska (*see* s. 44-5506.01, Neb. R.S.), Nevada (*see* s. 685A.082, Nev. R.S.), New Hampshire (*see* s. 405:24, N.H. Rev. Stat.), New Jersey (*see* s. 17:22-6.69b, N.J. Rev. St.), North Carolina (*see* s. 58-21-21, N.C.G.S.A.), North Dakota (*see* s. 26.1-44-03.2, NDCC), Ohio (*see* s. 3905.332, Oh. Rev. C.), Oklahoma (*see* 36 Ok. S.A. s. 1101.1), Texas (*see* s. 981.071-981.074, Tex. Ins. Code), Vermont (*see* 8 V.S.A. s. 5023a), Virginia (*see* s. 38.2-4811.1, V.C.A), and Wisconsin (*see* s. 618.41(13), W.S.A.).

The number of domestic surplus lines insurers has increased since 2011 from 15 to over 70, with the majority domiciled in Illinois and Delaware.<sup>31</sup>

### **Federal Nonadmitted and Reinsurance Reform Act of 2010**

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA or act) states that the placement of surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured's home state.<sup>32</sup> The act provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.<sup>33</sup> States are authorized to establish procedures to allocate tax revenues properly to states for multi-state risks and an insured's home state may require surplus lines brokers and insureds to annually file tax allocation reports detailing the portion of the policy premium attributable to exposure located in each state. States must participate in the national insurance producer database of the National Association of Insurance Commissioners (NAIC) or an equivalent uniform national database for the licensure of surplus lines brokers; a state that does not do so is prohibited from collecting fees related to licensing surplus lines brokers.<sup>34</sup> The eligibility requirements for surplus lines insurer must conform to the Non-Admitted Insurance Model Act of the NAIC unless the state adopts requirements that comply with the NRRA's requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements.<sup>35</sup> The NRRA also prohibits state laws requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing surplus lines insurance for an exempt commercial purchaser<sup>36</sup> if certain disclosures are made.<sup>37</sup>

### **Florida Insurance Guaranty Association**

The Florida Insurance Guaranty Association (FIGA) provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."<sup>38</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance<sup>39</sup> with certain exceptions.<sup>40</sup> Florida law provides that the FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than

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<sup>31</sup> John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual*, pg. 1.6 (2021), available at <https://surplusmanual.lockelord.com/preface/> (last visited Jan. 13, 2022).

<sup>32</sup> 15 U.S.C. s. 8202.

<sup>33</sup> 15 U.S.C. s. 8201(a).

<sup>34</sup> 15 U.S.C. s. 8203.

<sup>35</sup> 15 U.S.C. s. 8204.

<sup>36</sup> Defined in 15 U.S.C. s. 8206(5), as a person purchasing commercial insurance if such person has a qualified risk manager to negotiate insurance coverage, has paid nationwide property and casualty insurance premiums in excess of \$100,000 in the preceding 12 months, and meets one of five specified requirements regarding the net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.

<sup>37</sup> 15 U.S.C. s. 8205.

<sup>38</sup> Section 631.51, F.S.

<sup>39</sup> Section 631.57(3)(a), F.S. As established in s. 632.52, F.S., the Florida Insurance Guaranty Association (FIGA) covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.

<sup>40</sup> *Id.*

\$300,000.<sup>41</sup> For policies providing homeowner’s insurance coverage, the FIGA provides for up to an additional \$200,000 for the portion of a covered claim, which related to the damage to the structure and contents.<sup>42</sup>

### **Florida Workers’ Compensation Insurance Guaranty Association**

The Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) “provides a mechanism for the payment of covered claims under ch. 440, F.S., to avoid” delay and financial loss to claimants due to the insolvency of a workers’ compensation insurer.<sup>43</sup> The FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers<sup>44</sup> and self-insurance funds.<sup>45</sup> For purposes of the FWCIGA, “covered claim” includes unpaid claims under any employer liability coverage of a workers’ compensation policy limited to the lesser of \$300,000 or the limits of the policy.<sup>46</sup>

### **Florida Life and Health Insurance Guaranty Association**

The Florida Life and Health Insurance Guaranty Association (FLHIGA) exists to “protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the failure of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency.”<sup>47</sup> The maximum obligation of the FLHIGA to provide payment for any covered claim or policy is:

- For life insurance, \$100,000 in net cash surrender and net cash withdrawal values;
- For deferred annuity contracts, \$250,000 in net cash surrender and net cash withdrawal values;
- For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, \$500,000; and
- For all other benefits, including in long-term care policies, \$300,000, including cash values.

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<sup>41</sup> Section 631.57(1), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 631.902, F.S.

<sup>44</sup> “Insurer” means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, “insurer” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(5), F.S.

<sup>45</sup> “Self-insurance fund” means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. For purposes of this act, the term “self-insurance fund” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, F.S., an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S. Section 631.904(6), F.S.

<sup>46</sup> Section 631.904(2), F.S.

<sup>47</sup> Section 631.712, F.S.

### III. Effect of Proposed Changes:

The bill allows a domestic insurer possessing surplus as to policyholders of at least \$15 million, upon a resolution by its board of directors, to be made eligible as a domestic surplus lines insurer if approved by the Office of Insurance Regulation.

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted.

Insurance policies issued by a domestic surplus lines insurer, however, are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and
- Florida Workers' Compensation Guaranty Association.

A domestic surplus lines insurer is considered an unauthorized insurer for purposes of the Surplus Lines Law. This has the effect of applying the Surplus Lines Law to domestic surplus lines insurers because s. 626.915, F.S., specifies that surplus lines insurance may be procured from unauthorized insurers, but only if the following conditions are met:

- The insurance is eligible for export;
- The insurer is an eligible surplus lines insurer;
- The insurance is placed through a licensed Florida surplus lines agent; and
- The other applicable provisions of the Surplus Lines Law are met.

The bill also specifies that a domestic surplus lines insurer is considered a nonadmitted insurer as defined in 15 U.S.C. s. 8506<sup>48</sup> for the purposes of the Federal Nonadmitted and Reinsurance

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<sup>48</sup> Under 15 U.S.C. s. 8206(9), a "nonadmitted insurer" means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state, but does not include a risk retention group, as that term is defined in 15 U.S.C. 3901(a)(4).

Reform Act of 2010. This clarifies that the provisions of that law apply to domestic surplus lines insurers.

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill may have an indeterminate impact on tax collections as policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies, however, are exempt from other taxes levied upon domestic and foreign admitted insurers.

B. Private Sector Impact:

The bill will allow insurers domiciled in Florida to be made eligible to transact surplus lines insurance in Florida.

When fewer domestic insurers are willing to write a particular line of insurance, more insurance is likely to be written with surplus lines insurers. An example of this principle can be observed with the Florida property insurance market. Below are the amounts in total premium that surplus lines insurers collected for some common lines of property insurance:

Coverage	2017 Premium <sup>49</sup>	2020 Premium <sup>50</sup>
Commercial Property	\$1.711 billion	\$2.708 billion
Homeowners (HO-3)	\$360.582 million	\$437.225 million
Dwelling Property	\$97.844 million	\$165.739 million

Allowing domestic insurers to become eligible to transact surplus lines insurance may increase the number of property insurance policies written by surplus lines insurers. During a period of decreasing availability of property insurance from admitted insurance companies and often sizable rate increases by those admitted companies willing to write coverage, surplus lines carriers have taken on an increasing role in the Florida market. Consumers may benefit from the additional availability of coverage that domestic surplus lines insurers may provide. However, surplus lines property insurance policies are not subject to the jurisdiction of the Office of Insurance Regulation regarding rates and forms and if a surplus lines carrier becomes insolvent, surplus lines policies are not backed by the Florida Insurance Guaranty Association.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 626.914 of the Florida Statutes.

This bill creates section 626.9182 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.

<sup>49</sup> Florida Surplus Lines Service Office, *2020 Annual Report*, pg. 17, available at [https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/2017-annual-report.pdf?sfvrsn=a4041835\\_0](https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/2017-annual-report.pdf?sfvrsn=a4041835_0) (last visited Jan. 12, 2022).

<sup>50</sup> Florida Surplus Lines Service Office, *2017 Annual Report*, pg. 19, available at [https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/big-picture-2020-annual-report.pdf?sfvrsn=112a8e82\\_5](https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/big-picture-2020-annual-report.pdf?sfvrsn=112a8e82_5) (last visited Jan. 14, 2022).

B. Amendments:

None.

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

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By Senator Burgess

20-00879-22

20221402\_\_

A bill to be entitled

An act relating to domestic surplus lines insurance; amending s. 626.914, F.S.; revising the definition of the term "eligible surplus lines insurer"; defining the term "domestic surplus lines insurer"; creating s. 626.9182, F.S.; providing for the eligibility of domestic surplus lines insurers; subjecting and exempting surplus lines insurers and surplus lines policies from certain requirements; providing construction; reenacting ss. 458.320(1)(b) and (2)(b), 459.0085(1)(b) and (2)(b), and 464.0123(2)(a), F.S., relating to financial responsibility for the practice of medicine, financial responsibility for the practice of osteopathic medicine, and autonomous practice by an advanced practice registered nurse, respectively, to incorporate the amendment made to s. 626.914, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (2) of section 626.914, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(2) "Eligible surplus lines insurer" means an unauthorized insurer ~~that which~~ has been made eligible by the office to issue insurance coverage under this Surplus Lines Law; or a domestic surplus lines insurer.

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(5) "Domestic surplus lines insurer" means any domestic insurer that has been made eligible by the office to issue surplus lines insurance coverage.

Section 2. Section 626.9182, Florida Statutes, is created to read:

626.9182 Domestic surplus lines insurers.—

(1) Notwithstanding any other law, a domestic insurer possessing surplus as to policyholders of at least \$15 million may, pursuant to a resolution by its board of directors, and with the approval of the office, be made eligible as a domestic surplus lines insurer. Upon approval of the office, a domestic surplus lines insurer:

(a) May issue surplus lines insurance coverage in any jurisdiction, including this state.

(b) Is deemed an eligible surplus lines insurer and may issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue.

(c) May issue surplus lines insurance coverage only if the coverage has been placed with the insurer by a surplus lines agent pursuant to the Surplus Lines Law.

(2) A domestic surplus lines insurer is subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted.

(3) Surplus lines insurance policies issued by a domestic surplus lines insurer are exempt from all requirements relating to insurance rating and rating plans; policy forms; premiums charged to insureds; policy cancellation, nonrenewal, and renewal; and other requirements in the same manner and to the same extent as surplus lines policies issued by a surplus lines

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59 insurer domiciled in another state.

60 (4) Notwithstanding any other law, policies issued in this  
 61 state by a domestic surplus lines insurer are subject to taxes  
 62 assessed upon surplus lines policies issued by nonadmitted  
 63 insurers, including the surplus lines tax prescribed by s.  
 64 626.932, but are exempt from other taxes levied upon domestic  
 65 and foreign admitted insurers.

66 (5) Policies issued in this state by a domestic surplus  
 67 lines insurer are not subject to part II, part III, or part V of  
 68 chapter 631.

69 (6) For the purposes of the Surplus Lines Law, a domestic  
 70 surplus lines insurer is considered an unauthorized insurer.

71 (7) For the purposes of the federal Nonadmitted and  
 72 Reinsurance Reform Act of 2010 (NRRA), a domestic surplus lines  
 73 insurer is considered a nonadmitted insurer as defined in 15  
 74 U.S.C. s. 8206 with respect to risks insured in this state.

75 Section 3. For the purpose of incorporating the amendment  
 76 made by this act to section 626.914, Florida Statutes, in  
 77 references thereto, paragraph (b) of subsection (1) and  
 78 paragraph (b) of subsection (2) of section 458.320, Florida  
 79 Statutes, are reenacted to read:

80 458.320 Financial responsibility.—

81 (1) As a condition of licensing and maintaining an active  
 82 license, and prior to the issuance or renewal of an active  
 83 license or reactivation of an inactive license for the practice  
 84 of medicine, an applicant must by one of the following methods  
 85 demonstrate to the satisfaction of the board and the department  
 86 financial responsibility to pay claims and costs ancillary  
 87 thereto arising out of the rendering of, or the failure to

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88 render, medical care or services:

89 (b) Obtaining and maintaining professional liability  
 90 coverage in an amount not less than \$100,000 per claim, with a  
 91 minimum annual aggregate of not less than \$300,000, from an  
 92 authorized insurer as defined under s. 624.09, from a surplus  
 93 lines insurer as defined under s. 626.914(2), from a risk  
 94 retention group as defined under s. 627.942, from the Joint  
 95 Underwriting Association established under s. 627.351(4), or  
 96 through a plan of self-insurance as provided in s. 627.357. The  
 97 required coverage amount set forth in this paragraph may not be  
 98 used for litigation costs or attorney's fees for the defense of  
 99 any medical malpractice claim.

100 (2) Physicians who perform surgery in an ambulatory  
 101 surgical center licensed under chapter 395 and, as a continuing  
 102 condition of hospital staff privileges, physicians who have  
 103 staff privileges must also establish financial responsibility by  
 104 one of the following methods:

105 (b) Obtaining and maintaining professional liability  
 106 coverage in an amount not less than \$250,000 per claim, with a  
 107 minimum annual aggregate of not less than \$750,000 from an  
 108 authorized insurer as defined under s. 624.09, from a surplus  
 109 lines insurer as defined under s. 626.914(2), from a risk  
 110 retention group as defined under s. 627.942, from the Joint  
 111 Underwriting Association established under s. 627.351(4),  
 112 through a plan of self-insurance as provided in s. 627.357, or  
 113 through a plan of self-insurance which meets the conditions  
 114 specified for satisfying financial responsibility in s. 766.110.  
 115 The required coverage amount set forth in this paragraph may not  
 116 be used for litigation costs or attorney's fees for the defense

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117 of any medical malpractice claim.

118

119 This subsection shall be inclusive of the coverage in subsection  
120 (1).

121 Section 4. For the purpose of incorporating the amendment  
122 made by this act to section 626.914, Florida Statutes, in  
123 references thereto, paragraph (b) of subsection (1) and  
124 paragraph (b) of subsection (2) of section 459.0085, Florida  
125 Statutes, are reenacted to read:

126 459.0085 Financial responsibility.—

127 (1) As a condition of licensing and maintaining an active  
128 license, and prior to the issuance or renewal of an active  
129 license or reactivation of an inactive license for the practice  
130 of osteopathic medicine, an applicant must by one of the  
131 following methods demonstrate to the satisfaction of the board  
132 and the department financial responsibility to pay claims and  
133 costs ancillary thereto arising out of the rendering of, or the  
134 failure to render, medical care or services:

135 (b) Obtaining and maintaining professional liability  
136 coverage in an amount not less than \$100,000 per claim, with a  
137 minimum annual aggregate of not less than \$300,000, from an  
138 authorized insurer as defined under s. 624.09, from a surplus  
139 lines insurer as defined under s. 626.914(2), from a risk  
140 retention group as defined under s. 627.942, from the Joint  
141 Underwriting Association established under s. 627.351(4), or  
142 through a plan of self-insurance as provided in s. 627.357. The  
143 required coverage amount set forth in this paragraph may not be  
144 used for litigation costs or attorney's fees for the defense of  
145 any medical malpractice claim.

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146 (2) Osteopathic physicians who perform surgery in an  
147 ambulatory surgical center licensed under chapter 395 and, as a  
148 continuing condition of hospital staff privileges, osteopathic  
149 physicians who have staff privileges must also establish  
150 financial responsibility by one of the following methods:

151 (b) Obtaining and maintaining professional liability  
152 coverage in an amount not less than \$250,000 per claim, with a  
153 minimum annual aggregate of not less than \$750,000 from an  
154 authorized insurer as defined under s. 624.09, from a surplus  
155 lines insurer as defined under s. 626.914(2), from a risk  
156 retention group as defined under s. 627.942, from the Joint  
157 Underwriting Association established under s. 627.351(4),  
158 through a plan of self-insurance as provided in s. 627.357, or  
159 through a plan of self-insurance that meets the conditions  
160 specified for satisfying financial responsibility in s. 766.110.  
161 The required coverage amount set forth in this paragraph may not  
162 be used for litigation costs or attorney's fees for the defense  
163 of any medical malpractice claim.

164  
165 This subsection shall be inclusive of the coverage in subsection  
166 (1).

167 Section 5. For the purpose of incorporating the amendment  
168 made by this act to section 626.914, Florida Statutes, in a  
169 reference thereto, paragraph (a) of subsection (2) of section  
170 464.0123, Florida Statutes, is reenacted to read:

171 464.0123 Autonomous practice by an advanced practice  
172 registered nurse.—

173 (2) FINANCIAL RESPONSIBILITY.—

174 (a) An advanced practice registered nurse registered under

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20221402\_

175 this section must, by one of the following methods, demonstrate  
176 to the satisfaction of the board and the department financial  
177 responsibility to pay claims and costs ancillary thereto arising  
178 out of the rendering of, or the failure to render, nursing care,  
179 treatment, or services:

180 1. Obtaining and maintaining professional liability  
181 coverage in an amount not less than \$100,000 per claim, with a  
182 minimum annual aggregate of not less than \$300,000, from an  
183 authorized insurer as defined in s. 624.09, from a surplus lines  
184 insurer as defined in s. 626.914(2), from a risk retention group  
185 as defined in s. 627.942, from the Joint Underwriting  
186 Association established under s. 627.351(4), or through a plan  
187 of self-insurance as provided in s. 627.357; or

188 2. Obtaining and maintaining an unexpired, irrevocable  
189 letter of credit, established pursuant to chapter 675, in an  
190 amount of not less than \$100,000 per claim, with a minimum  
191 aggregate availability of credit of not less than \$300,000. The  
192 letter of credit must be payable to the advanced practice  
193 registered nurse as beneficiary upon presentment of a final  
194 judgment indicating liability and awarding damages to be paid by  
195 the advanced practice registered nurse or upon presentment of a  
196 settlement agreement signed by all parties to such agreement  
197 when such final judgment or settlement is a result of a claim  
198 arising out of the rendering of, or the failure to render,  
199 nursing care and services.

200 Section 6. This act shall take effect July 1, 2022.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** January 19, 2022

---

I respectfully request that **Senate Bill #1402**, relating to Domestic Surplus Lines , be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

---

Senator Danny Burgess  
Florida Senate, District 20

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/26

Meeting Date

1402

Bill Number or Topic

S Ag, Env & GG

Committee

Amendment Barcode (if applicable)

Name Greg Black

Phone 509 8022

Address 1727 Highland Place

Email greg@waypointstrat.com

City TLH State FL Zip 32308

Speaking: [ ] For [ ] Against [ ] Information OR Waive Speaking: [x] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

R Street Institute

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf flsenate.gov

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/26/2022

Meeting Date

SB 1402

Bill Number or Topic

AEG

Committee

Amendment Barcode (if applicable)

Name Timothy Stanfield

Phone 850-933-1760

Address 107 College AV

Email stanfieldt@gtlaw.com

Street

Gallahusga

FL

32301

City

State

Zip

Speaking:  For  Against  Information OR Waive Speaking:  In Support  Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FCCI Insurance group

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. 2020-2022 Joint Rules. [df.flisenate.gov](http://df.flisenate.gov)

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# CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Agriculture, Environment, and General Government Judge:

Started: 1/26/2022 3:30:17 PM

Ends: 1/26/2022 4:14:29 PM

Length: 00:44:13

3:30:48 PM Sen. Albritton (Chair)  
3:31:40 PM S 922  
3:31:47 PM Sen. Perry  
3:32:46 PM Sen. Ausley  
3:32:53 PM Sen. Perry  
3:33:25 PM S 1402  
3:33:35 PM Sen. Burgess  
3:34:31 PM Timothy Stanfield, FCCI Insurance Group (waives in support)  
3:34:42 PM Greg Black, R Street Institute (waives in support)  
3:34:58 PM Sen. Boyd  
3:35:14 PM Sen. Burgess  
3:35:57 PM S 1400  
3:36:07 PM Sen. Burgess  
3:37:30 PM Dave Cullen, Sierra Club Florida  
3:38:36 PM Lindsay Cross, Water and Land Policy Director, Florida Conservation Voters  
3:41:29 PM William Sterling, Commissioner, Auburndale (waives in support)  
3:41:43 PM Julie Fife, Community Development Director, Auburndale (waives in support)  
3:41:54 PM Keith Cowie, Vice Mayor, Auburndale (waives in support)  
3:42:04 PM Brad Dantzler, Mayor, Winter Haven (waives in support)  
3:42:11 PM Mac Fuller, Commissioner, Lake Alfred (waives in support)  
3:42:20 PM Ryan Leavengood, City Manager, Lake Alfred (waives in support)  
3:42:27 PM Ryan J. Taylor, Deputy County Manager, Polk County, Exec. Director Polk Regional Water Cooperative (waives in support)  
3:42:35 PM Jack Dearmin, Vice Mayor, Lake Alfred (waives in support)  
3:42:44 PM Meta Calder, Volunteer, Florida League of Women Voters (waives in support)  
3:42:51 PM Jeffrey E. Tillman, City Manager, Auburndale (waives in support)  
3:42:58 PM Jack Myers, Commissioner, Auburndale (waives in support)  
3:43:00 PM Richard Hamann, Commissioner, Auburndale (waives in support)  
3:43:11 PM Dorothea Bogert, Mayor, Auburndale (waives in support)  
3:43:16 PM Christopher Reeder, Auburndale (waives in support)  
3:43:23 PM John Dickson, Public Utilities Director, Auburndale (waives in support)  
3:43:29 PM Richard Hamann, Commissioner, Auburndale (waives in support)  
3:43:42 PM Phillip Walker, Commissioner, Lakeland (waives in support)  
3:43:53 PM Sen. Stewart  
3:44:50 PM Sen. Burgess  
3:46:10 PM S 606  
3:46:12 PM Sen. Garcia  
3:46:25 PM Am. 960338  
3:47:20 PM S 606 (con't)  
3:47:25 PM Sen. Garcia  
3:50:03 PM Sen. Berman  
3:50:24 PM Sen. Garcia  
3:50:25 PM Sen. Berman  
3:50:40 PM Sen. Garcia  
3:51:09 PM Sen. Berman  
3:51:25 PM Sen. Garcia  
3:52:27 PM Sen. Berman  
3:52:56 PM Sen. Garcia  
3:53:35 PM Sen. Berman  
3:53:46 PM Sen. Garcia  
3:53:48 PM Sen. Albritton  
3:53:57 PM Sen. Garcia

**3:54:20 PM** Sen. Albritton  
**3:54:38 PM** Sen. Garcia  
**3:54:50 PM** Jess M. McCarty, Executive Assistant County Attorney, Miami (waives in support)  
**3:55:03 PM** Sen. Garcia  
**3:55:35 PM** S 832  
**3:55:46 PM** Sen. Stewart  
**3:57:32 PM** Paul Owens, President, 1000 Friends of Florida  
**4:00:25 PM** Meta Calder, Volunteer, Florida League of Women Voters  
**4:01:08 PM** Lindsay Cross, Water and Land Policy Director, Florida Conservation Voters  
**4:03:33 PM** David Cullen, Sierra Club Florida (waives in support)  
**4:03:51 PM** Sen. Stewart  
**4:04:40 PM** S 486  
**4:04:50 PM** Sen. Brodeur  
**4:05:32 PM** Am. 635244  
**4:05:40 PM** Sen. Brodeur  
**4:06:20 PM** S 486 (con't)  
**4:06:30 PM** Sen. Bradley  
**4:07:00 PM** Sen. Brodeur  
**4:08:20 PM** Sen. Bradley  
**4:08:39 PM** Sen. Brodeur  
**4:09:05 PM** Sal Nuzzo, Vice President of Policy, The James Madison Institute (waives in support)  
**4:09:19 PM** Russ Weigel, Commissioner, Office of Financial Regulation (waives in support)  
**4:09:26 PM** Sen. Brodeur  
**4:09:56 PM** S 1274  
**4:10:05 PM** Sen. Broxson  
**4:10:34 PM** Sen. Berman  
**4:10:48 PM** Sen. Broxson  
**4:11:32 PM** Austin Stowers, Director of Legislative Affairs, Dept. of Financial Services (waives in support)  
**4:12:26 PM** TAB 1 - Senate Confirmation Hearing  
**4:12:30 PM** Sen. Brodeur  
**4:12:40 PM** Sen. Bradley  
**4:12:53 PM** Sen. Mayfield  
**4:13:30 PM** Sen. Albritton