Tab 3	**SB 70** by **Rouson (CO-INTRODUCERS) Ausley**; (Similar to CS/H 06509) Relief of Donna Catalano by the Department of Agriculture and Consumer Services

513390	A	S	L	RCS	AEG, Rouson	Delete L.73:	02/16 04:03 PM

Tab 4	**CS/SB 186** by **BI, Brandes**; (Compare to CS/H 01307) Citizens Property Insurance Corporation

157680	A	S		RCS	AEG, Brandes	Delete L.367 - 370:	02/16 04:03 PM
202280	A	S		RCS	AEG, Brandes	Delete L.964 - 965:	02/16 04:03 PM

Tab 5	**CS/SB 954** by **GO, Brodeur (CO-INTRODUCERS) Brandes**; (Similar to CS/H 01139) Energy

520676	A	S		RCS	AEG, Brodeur	Delete L.52 - 81:	02/16 04:03 PM

Tab 6	**CS/SB 1426** by **EN, Burgess**; (Similar to CS/CS/H 00965) Environmental Management

442316	A	S		RS	AEG, Burgess	Delete L.52 - 317:	02/16 04:03 PM
309240	SA	S		RCS	AEG, Burgess	Delete L.52 - 317:	02/16 04:03 PM

Tab 7	**CS/SB 1728** by **BI, Boyd**; (Compare to CS/H 01307) Property Insurance

741042	A	S	L	RCS	AEG, Boyd	Delete L.381 - 409:	02/16 04:03 PM

Tab 8	**SB 1764** by **Albritton**; (Similar to CS/H 01419) Municipal Solid Waste-to-Energy Program

244354	D	S		RCS	AEG, Albritton	Delete everything after	02/16 04:03 PM

Tab 9	**SB 1476** by **Wright**; (Similar to H 00357) Prescription Drug Coverage

Tab 10	**CS/SB 1952** by **GO, Albritton**; (Similar to CS/H 01057) Evidence of Vendor Financial Stability

598822	A	S		RCS	AEG, Albritton	Delete L.32 - 35:	02/16 04:03 PM

Tab 11	**SB 1832** by **Brodeur (CO-INTRODUCERS) Rouson**; (Identical to H 01379) Food Recovery

888136	A	S		RS	AEG, Brodeur	Delete L.80:	02/16 04:03 PM
547636	SA	S		RCS	AEG, Brodeur	Delete L.79 - 82.	02/16 04:03 PM

Tab 12	**CS/SB 1430** by **BI, Burgess**; (Similar to CS/H 01023) Insolvent Insurers

729540	A	S		RCS	AEG, Burgess	Delete L.110 - 195:	02/16 04:03 PM
347680	AA	S		RCS	AEG, Burgess	Delete L.30:	02/16 04:03 PM

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, February 16, 2022
TIME: 1:00—3:00 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
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Secretary of Business and Professional Regulation		
1	Griffin, Melanie (Tampa)	Pleasure of Governor	Recommend Confirm Yeas 10 Nays 0
	Executive Director of Northwest Florida Water Management District		
2	Seigler, Robert (DeFuniak Springs)	Pleasure of the Board	Recommend Confirm Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 70** Rouson (Identical H 6509)	Relief of Donna Catalano by the Department of Agriculture and Consumer Services; Providing for the relief of Donna Catalano by the Department of Agriculture and Consumer Services; providing an appropriation to compensate Donna Catalano for injuries and damages sustained as a result of the negligence of Donald Gerard Burthe, an employee of the Department of Agriculture and Consumer Services; providing a limitation on the payment of compensation and attorney fees, etc. SM JU 01/24/2022 Favorable AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 186** Banking and Insurance / Brandes (Compare CS/H 1307, CS/S 1728)	Citizens Property Insurance Corporation; Requiring, rather than authorizing, the corporation to use a single account under certain circumstances; requiring that policies assumed by the corporation from unsound insurers be charged a specified premium until certain conditions are met; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status, etc. BI 01/25/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
5	**CS/SB 954** Governmental Oversight and Accountability / Brodeur (Similar CS/H 1139)	Energy; Revising the selection criteria for purchasing or leasing vehicles for state agency, college, or university or certain local government fleets; requiring the Department of Management Services, using available industry data, to rank certain vehicles based on the lowest lifetime ownership costs over a specified number of years, rather than fuel efficiency, and to publish the rankings to the department's website; requiring the department, before a specified date, to make recommendations to state agencies and local governments relating to the procurement and integration of electric vehicles, etc. GO 01/13/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
6	**CS/SB 1426** Environment and Natural Resources / Burgess (Similar CS/CS/H 965, Compare CS/H 349, CS/S 198)	Environmental Management; Providing for water quality enhancement areas, enhancement service areas, and enhancement credits; providing requirements for water quality enhancement area permits, enhancement service areas, and enhancement credits; directing the Department of Environmental Protection and water management districts to authorize the sale and use of enhancement credits to offset certain adverse water quality impacts and to meet certain water quality requirements; authorizing the department to enter into agreements and contracts with public and private entities for donations, funds, and payments to expedite the evaluation of environmental resource and dredge and fill permits, etc. EN 01/31/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 1728** Banking and Insurance / Boyd (Compare CS/H 1307, CS/S 186)	Property Insurance; Deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; providing for a required limited annual rate increase for specified polices; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance policies by including roof surface type reimbursement schedules, etc. BI 02/02/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 9 Nays 1
8	**SB 1764** Albritton (Similar CS/H 1419)	Municipal Solid Waste-to-Energy Program; Creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; requiring the department, subject to appropriation, to provide financial assistance grants to municipal solid waste-to-energy facilities that meet certain requirements; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility, etc. RI 01/25/2022 Favorable AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
9	**SB 1476** Wright (Similar H 357, Compare S 742)	Prescription Drug Coverage; Authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations, etc. BI 02/02/2022 Favorable AEG 02/16/2022 Favorable AP	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 1952** Governmental Oversight and Accountability / Albritton (Similar CS/H 1057)	Evidence of Vendor Financial Stability; Authorizing an agency, in making a certain determination, to establish financial stability criteria and require a demonstration of financial stability; providing that an agency that requires a vendor to demonstrate financial stability during a competitive solicitation process must accept certain evidence, etc. GO 01/26/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
11	**SB 1832** Brodeur (Identical H 1379, Compare H 1567)	Food Recovery; Directing the Department of Agriculture and Consumer Services, subject to appropriation, to implement a pilot program to provide incentives to Florida growers to contribute high-quality fresh fruits and vegetables to food recovery entities in the state; authorizing food recovery entities to negotiate the purchase price of produce and reimburse agricultural companies for certain costs; requiring the department to reimburse food recovery entities for certain costs, etc. AG 01/19/2022 Temporarily Postponed AG 01/26/2022 Favorable AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
12	**CS/SB 1430** Banking and Insurance / Burgess (Identical H 1023)	Insolvent Insurers; Revising a prohibition against certain insolvent insurers' former officers or directors serving as officers or directors of an insurer or having direct or indirect control over certain selection or appointment of officers or directors, to allow such activities unless the Office of Insurance Regulation enters a specified order; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; authorizing insurers remitting assessments to the Florida Insurance Guaranty Association, Incorporated, to elect not to recoup advances; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments, etc. BI 01/18/2022 Fav/CS AEG 02/16/2022 Fav/CS AP	Fav/CS Yeas 10 Nays 0
	Other Related Meeting Documents		

RON DESANTIS
GOVERNOR

December 22, 2021

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 20.165, Florida Statutes:

Mrs. Melanie Griffin
4220 West Corona Street
Tampa, Florida 33629

as Secretary of the Department of Business and Professional Regulation, succeeding Julie Brown, subject to confirmation by the Senate. This appointment is effective January 3, 2022, for a term ending at the pleasure of the Governor.

Sincerely,

Ron DeSantis
Governor

RD/kk

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
2022 JAN 25 PM 12:12
DIVISION OF ELECTIONS
TALLAHASSEE FL

STATE OF FLORIDA

County of Leon

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

Secretary- Department of Business and Professional Regulation

(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.]

Melanie P. Griffin

Signature

Sworn to and subscribed before me by means of ✓ *physical presence or* __ *online notarization. this* 25th *day of* January, 2022.

Dixie Irene Parker

Signature of Officer Administering Oath or of Notary Public

DIXIE IRENE PARKER
MY COMMISSION # GG 284245
EXPIRES: April 13, 2023
Bonded Thru Notary Public Underwriters

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ ***OR*** *Produced Identification* ☐

Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: ☐ Home ☑ Office

2601 Blair Stone Road

Street or Post Office Box

Tallahassee, FL 32399-1000

City, State, Zip Code

Melanie S. Griffin

Print Name

Melanie P. Griffin

Signature

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

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

Melanie S. Griffin

is duly appointed

Secretary,
Department of Business and Professional Regulation

for a term beginning on the Twenty-Second day of December, A.D., 2021, to serve at the pleasure of the Governor 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 Twenty-Sixth day of January, A.D., 2022.

Laurel M. Lee

Secretary of State

DSDE 99 (3/03)

RON DESANTIS
GOVERNOR

January 13, 2022

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 373.079(4)(a), Florida Statutes:

Mr. R. Lyle Seigler
7450 County Highway 280 East
DeFuniak Springs, Florida 32435

as Executive Director of the Northwest Florida Water Management District Governing Board, subject to confirmation by the Senate. This appointment is effective January 13, 2022.

Sincerely,

Ron DeSantis
Governor

RD/kk

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED

2022 JAN 14 PM 3:37

DIVISION OF ELECTIONS
TALLAHASSEE, FL

HAND DELIVERED

STATE OF FLORIDA

County of Gadsden

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, Northwest Florida 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.]

Robert Lyle Seigler
Signature

Sworn to and subscribed before me by means of X *physical presence or* ___ *online notarization, this* 14th *day of* January 2022

Signature of Officer Administering Oath or of Notary Public

Toni Devencenzi
Print, Type, or Stamp Commissioned Name of Notary Public

TONI DEVENCENZI
Commission # GG 365681
Expires August 14, 2023
Bonded Thru Troy Fain Insurance 800-385-7019

Personally Known ☒ ***OR*** *Produced Identification* ☐

Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: ☐ Home ☑ Office

81 Water Management Drive
Street or Post Office Box

Havana, FL 32333
City, State, Zip Code

Robert Lyle Seigler
Print Name

Robert Lyle Seigler
Signature

DS-DE 56 (Rev. 02/20)

2410

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

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

Robert Lyle Seigler

is duly appointed

Executive Director,
Northwest Florida Water Management District

for a term beginning on the Thirteenth day of January, A.D., 2022, 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 Eighteenth day of January, A.D., 2022.

Laurel M. Lee

Secretary of State

DSDE 99 (3/03)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/19/22	SM	Favorable
1/24/22	JU	Favorable
2/15/22	AEG	Recommend: Fav/CS
	AP	

January 19, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Darryl Rouson
HB 6509 – Representative Juan Fernandez-Barquin
Relief of Donna Catalano

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR $3,175,000, SUPPORTED BY THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (DACS). THE CLAIM SEEKS COMPENSATION FROM THE GENERAL REVENUE FUND TO DACS, TO COMPENSATE CLAIMANT FOR PERSONAL INJURIES AND DAMAGES SUSTAINED IN A MOTOR VEHICLE ACCIDENT RESULTING FROM THE NEGLIGENT OPERATION OF A DACS VEHICLE.

FINDINGS OF FACT:

The Accident

On June 26, 2019, at around 3:20 p.m., Claimant, Donna Catalano's vehicle was struck head-on by a DACS pickup truck that was being operated by Donald Gerard Burthe, a DACS employee, acting within the scope of his employment.

Claimant was driving to her home, in Jefferson County, after she finished her shift as an emergency room nurse at Tallahassee Memorial Hospital.[1] As Claimant drove east on U.S. 90/Mahan Drive, in her blue 2015 Chevrolet Equinox, she approached an area with a curve, where she saw a white

[1] Claimant's shift was from 4:00 a.m. - 2:30 p.m.

vehicle drift across the center line and onto her side of the road.

According to the crash report, the weather was clear, it was daylight, and the road surface was dry. The extent of damage to both vehicles was described as disabling and both vehicles were towed. The vehicle that collided with Claimant was listed as owned by "Florida Department of Agricult [sic]," and driven by Donald Gerard Burthe. Both Claimant and the DACS employee are listed as having been wearing shoulder and lap belts. Both vehicles are listed as having had front airbags deploy. Both parties were transported to Tallahassee Memorial.

Prior to the collision, Claimant was traveling at the posted speed limit of 60 miles per hour. Claimant attempted to avert the collision by breaking and turning out of the way. Data downloaded from Claimant's vehicle shows that Claimant reduced her speed from 60 miles per hour down to 43 miles per hour.[2]

The DACS employee was driving above the posted speed limit of 60 miles per hour. Photographs of the DACS vehicle show that the speedometer froze at just under 70 miles per hour. An affidavit by professional engineer, G. Bryant Buchner, states that the speedometer was electrically powered. When the collision occurred, all electrical power in the vehicle was severed. As a result, the speedometer froze at the time of the collision, indicating that the vehicle was travelling above the posted speed limit at impact.

There was a car traveling in front of Claimant and a car traveling behind Claimant. The car in front of Claimant was driven by Jennifer Washington, with her daughter Teriana Robinson as a passenger. The driver, Washington, states in her deposition that she saw the DACS vehicle drifting into her lane and crossing over the yellow line[3] toward her, so she sped up to avoid a collision. Washington witnessed the collision through her rearview mirror and saw the vehicle hit Claimant head-on. The passenger, Robinson, states in her deposition that she saw a white truck going toward

[2] The data downloaded from Claimant's vehicle was memorialized in an affidavit by G. Bryant Buchner, a professional engineer, recognized in the state of Florida.
[3] Photos of the crash scene and the diagram below reflect that the yellow line mentioned in Teriana Robinson's deposition was actually a set of two solid yellow lines (Exhibit G).

Tallahassee and coming into their lane of travel, so Washington slightly swerved off of the road to keep the DACS vehicle from hitting them. Robinson states that she also witnessed the DACS truck hitting the blue car behind them, through the rearview mirror, causing both vehicles to flip in opposite directions.

The car behind Claimant was driven by Marian Simmons. She states in her deposition that she saw a white pickup truck with the driver's side wheels over the center line. She slowed down and saw the truck hit Claimant head-on.

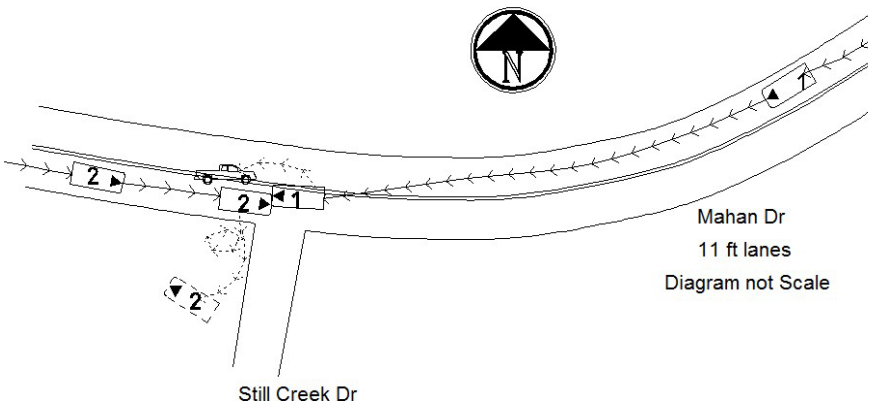
The responding Florida Highway Patrol Trooper, N.A. Hagedorn, confirmed in his crash report:

> The [DACS vehicle] failed to maintain his lane of travel and crossed the centerline onto the eastbound lane and into the path of [Claimant's vehicle]. [Claimant's vehicle] was unable to react in time to avoid a collision with [the DACS vehicle]. [The DACS vehicle's] front left struck the front left of [Claimant's vehicle]. After the [DACS vehicle] struck [Claimant's vehicle], [the DACS vehicle] began to overturn where it came to rest on the eastbound lanes on its right side, partially on its roof. [Claimant's vehicle] traveled onto the south shoulder where it overturned before coming to rest. [The DACS vehicle] came to final rest between the centerline and eastbound lane of Mahan Drive facing east on its right side, partially on its roof. [Claimant's vehicle] came to final rest facing west on the south shoulder of Mahan Drive.[4]

The DACS Employee was cited for violating s. 316.089, F.S., relating to driving on roadways laned for traffic.[5]

[4] Trooper N.A. Hagedorn, Florida Highway Patrol Crash Report (Jun 26, 2019) (Exhibit A).
[5] "A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Section 316.089 (1), F.S.

Crash Report Diagram



Damages

The Leon County Emergency Medical Services records show that after the crash Claimant could not exit the vehicle and paramedics had to cut her out. She was placed in a cervical collar awaiting extrication. The windshield was compromised, the A-pillar was pushed back and the driver's door was folded. The steering wheel was against Claimant's chest and the dashboard pinned her legs. All airbags were deployed. The wreckage had to be pried back from Claimant's torso. She was extracted, and placed on a backboard, immobilized and transported to Tallahassee Memorial Hospital.

Claimant underwent multiple surgeries in the days after the collision. X-Rays compared to demonstrative medical illustrations show bone grafts, plates, cables, and screws used to repair fractures in Claimant's left arm and both femurs.

Emergency Center Records from Tallahassee Memorial hospital reflect the following medical injuries:

- acute post hemorrhagic anemia;
- left hand abrasions;
- contusions diffusely across left side of body;
- left distal skin laceration;
- right hemotympanum;
- trace left basilar pneumothorax;
- displaced comminuted fracture of shaft of radius, left arm (surgical repair);
- displaced comminuted fracture of shaft of ulna, left arm (surgical repair);
- displaced comminuted fracture of all the humeral head and neck, left arm (surgical repair);

- placement of external fixator, left femur (surgical repair);
- placement of external fixator, right, femur (surgical repair);
- displaced supracondylar fracture with intracondylar extension of lower end of left femur (surgical repair);
- displaced supracondylar fracture with intracondylar extension of lower end of right femur (surgical repair);
- hypomagnesemia;
- multiple displaced fractures of ribs;
- displaced left L2, L3, L4 transverse process fractures;
- traumatic pneumocephalus.

Claimant spent nine days in Tallahassee Memorial Hospital from her admittance on June 26, 2019, until her discharge on July 5, 2019. The Discharge Summary Final Report shows that Claimant was transferred to inpatient rehabilitation at Tallahassee Memorial Hospital Rehabilitation where she spent 77 days. After, she was transferred to her home and underwent 42 days of outpatient rehabilitation.

Medical Expenses

A summary of Claimant's past medical expenses, detailing the provider, dates of service, and charges, reflects a total of $676,935.36 in medical bills resulting from the collision.

A life care plan, prepared for Claimant, based on a life expectancy of 85 years, anticipates her future medical requirements to total $861,325.[6]

Ms. Catalano's Future Medical Expenses	**Amount**
Physician Services	$21,151.82
Routine Diagnostics	$11,244.62
Medications	$146,746.40
Laboratory Studies	$11,265.76
Rehabilitation Services	$36,678.36
Equipment & Supplies	$59,044.97
Environmental Modifications & Essential Services	$52,800.00
Nursing & Attendant Care	$275,244.48
Acute Care Services	$247,149.50
TOTAL	**$861,325.91**

[6] The *Life Care Plan* was prepared by Dr. Christopher Leber, a Physical Medicine & Rehabilitation specialist, who has practiced medicine in Florida since 1995. Dr. Leber is a Board Member of the American Academy of Physician Life Care Planners, and a member of the American Academy of Physician Life Care Planners Educational Committee.

Lost Wages
Due to her life altering injuries, Claimant can no longer perform her job as a nurse and was discharged from her employment with Tallahassee Memorial Hospital.

An economic loss report,[7] prepared for Claimant, based on her life expectancy at the time of the accident of 84.74 years, calculate Claimant's loss of earnings and benefits to be $669,363.[8] Her loss of household production is calculated to be $211,615.[9]

Loss of Enjoyment of Life; and Pain and Suffering
Before the collision, Claimant was a member of the Tallahassee Memorial Hospital team where she worked as an emergency room nurse. She lived an active lifestyle and enjoyed deep sea fishing, hunting, hiking, fishing, and gardening with her family.

Since the collision, Claimant has pain on a daily basis. She can no longer walk normally. She is limited to standing for about fifteen to twenty minutes before needing to sit. She uses a cane when she walks. She mostly uses a wheelchair at home. Her right arm no longer straightens out and she cannot raise it above her head. As a result, she has cut her hair short since she can no longer brush it herself. She periodically suffers from incontinence and depression.

Claimant can no longer perform basic functions required of a nurse such as kneeling; performing CPR; lifting, pulling and turning patients; or pushing stretchers and wheelchairs. As a result, she cannot serve as a nurse or personally perform such functions for her loved ones when they are in need. During her recovery, Claimant's partner of over 30 years fell ill and had to be put into hospice care. Similarly, Claimant's father was placed into hospice care just days before the special

[7] The Economic Loss Report was prepared by Benjamin S. Shippen, Ph.D., of Secretariat Economists, who has a Ph.D. in Economics. Mr. Shippen has worked as an economic consultant and expert witness in statistical analysis of employment practices since 2000.
[8] Claimant briefly worked in a temporary OPS position with the State of Florida Department of Health in Leon County from August 12, 2020 to June 30, 2021. This position paid $25 an hour. The earnings from this position partially mitigated the earnings loss.
[9] The Economic Loss Report estimates that Claimant will be unable to perform 694 hours of household production per year that she would have otherwise performed herself.

master hearing. Claimant otherwise would have performed these functions herself.

LITIGATION HISTORY:

Litigation and Settlement

On July 10, 2020, Claimant filed suit in the Second Judicial Circuit, in and for Leon County. On July 15, 2021, the parties completed mediation in the matter and reached an agreement.

On July 16, 2021, the parties entered into a settlement agreement. DACS agreed to have the Florida Division of Risk Management pay the $200,000 statutory cap prescribed by section 768.28, Florida Statutes, and to support a claim bill for the excess amount of $3,175,000.

On August 6, 2021, the Division of Risk Management paid $200,000 to Claimant's attorney which was disbursed as follows:

- Claimant's attorney's fees: $50,000 (25 percent);
- Claimant's attorney's fees deferred on the uninsured motorist settlement: $2,500;[10]
- Costs advanced: $23,494.50;[11]
- Medical care providers: $25,488.57;
- Claimant: $98,516.93.

CLAIM BILL HEARING:

On December 8, 2021, a half-day virtual hearing was held before the House and Senate special masters.

Both parties stipulated to all of the exhibits submitted into evidence. It was made clear that both parties fully cooperated throughout the entire matter and responded to all requests for documentation.

Claimant's Case-in-Chief

Claimant's mother, Loretta Catalano; Claimant's son, Tony Grimes; Claimant's neighbor, Dr. David Greene; and Claimant's former colleague and nurse, Rebecca Berhalter provided live testimony via WebEx.[12] The parties gave

[10] Reduced from 33.33 percent ($3,333.33) to 25 percent.
[11] Claimant's Settlement Statement, signed on October 8, 2021, reflects that that the total costs advanced equal $46,988.99, of which $23,494.49 are deferred.
[12] All witnesses who provided live testimony at the Special Master Hearing are also included in a documentary produced by Claimant detailing the events and depicting the impact of the collision on Claimant's life (Exhibit Z6).

testimony that spoke to Claimant's life before and after the collision.

Claimant also testified as to the day of the accident, the collision, her quality of life before and after the event, injuries, and recovery.

Respondent's Case-in-Chief
DACS did not admit liability but waived its case-in-chief. Therefore, the respondent did not present or contest any evidence, theories, or arguments at the hearing.

Counsel for DACS asked one clarifying question as to whether Claimant was on the phone with her partner at the time of the accident. Claimant admitted she was on the phone and reiterated that she was hands-free and utilizing the OnStar feature on her vehicle.

When questioned as to the whereabouts and condition of the DACS employee who was driving the vehicle, both counsel for Claimant and counsel for DACS explained that Burthe had passed away as a result of the accident. Counsel for DACS could not confirm whether an investigation was conducted. It is unknown what caused the DACS employee to drift out of his lane and into Claimant's lane.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability for a claim or judgment by one person up to $200,000. Sums exceeding this amount are payable by the State through further act of the Legislature.

Regardless of any jury verdict or settlement, claim bills are reviewed de novo when assigned to a special master, and each element of negligence must be found within the evidence.

Negligence
Florida jury instructions define negligence as "the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances;"[13] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes

[13] Florida Civil Jury Instructions, 401.4 – Negligence.

substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[14]

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[15]

Vicarious Liability

"An agent is a person who is employed to act for another, and whose actions are controlled by his employer. An employer is responsible for the negligence of its agent if such negligence occurs while the agent is performing services which he was employed to perform."[16]

Vicarious liability for the acts of the DACS employee is undisputed and admitted by DACS. The vehicle that collided with Claimant was owned and registered to the Florida Department of Agriculture and Consumer Services. The signed and notarized affidavit by Joey Hicks, the Administrator for DACS, admits that at the time of the collision Burthe was employed by DACS, was operating the DACS vehicle with express permission, his actions were controlled by DACS, and that he was in the course and scope of his employment with DACS. Therefore, DACS is vicariously liable for the collision.[17]

Duty

The operator of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path.[18]
The DACS employee had a statutory duty, under section 316.089, Florida Statutes., to maintain his lane. This duty required the DACS employee to drive the vehicle "as nearly as practicable entirely within a single lane." The

[14] Florida Civil Jury Instructions, 401.12(a) - Legal Cause, Generally.
[15] Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007).
[16] Florida Civil Jury Instructions, 401.12(a) - 401.14(b)(1) Vicarious Liability – Agency, Master and Servant.
[17] *See* Florida Civil Jury Instructions, 401.14(a) - Preliminary Issues — Vicarious Liability - Owner, Lessee, or Bailee of Vehicle Driven by Another.
[18] Gowdy v. Bell, 993 So. 2d 585, 586 (Fla. 1st DCA 2008).

statute further requires that a driver not move from their lane until after they have ascertained that this movement can be made safely.[19]

Breach

As the evidence demonstrates, the DACS employee violated section 316.089, Florida Statutes, and breached the required standard of care when he drifted out of his lane and into Claimant's oncoming lane of travel. With at least three vehicles traveling in the oncoming lane of traffic, it was clearly not safe for the DACS employee to move from his lane of travel.

Causation

Negligence is "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[20]

The DACS employee's negligence is the legal cause of Claimant's loss, injury, and damages. The collision and Claimant's damages are a reasonably foreseeable result in the sequence of events caused by the head-on collision, at a speed over 60 miles per hour, which was unavoidable even with Claimant's ability to reduce her velocity. A collision was a foreseeable outcome from the risk produced by the DACS employee's failure to maintain his lane; and but for the DACS employee's failure to maintain his lane, the accident would not have occurred.

Comparative negligence was not a defense raised during the special master hearing, nor does the undersigned find any evidence of comparative negligence in the record. Although Claimant was on the phone at the time of the collision, she was hands free and still managed to reduce her speed, which likely minimized the impact of the collision.

Damages

Lost earnings and benefits	$669,363
Loss of household production	$211,615
Life care plan value	$861,325

[19] Section 316.089(1), F.S.
[20] Florida Civil Jury Instructions, 401.12(a) - Legal Cause, Generally.

Past and present economic loses (not including past medical bills)	$1,742,203
TOTAL	**$2,623,181**

CONCLUSION:

Claimant has demonstrated negligence by the DACS employee and vicarious liability of DACS for the employee's negligence. A reasonably careful driver traveling down a two-lane road would maintain their lane, so as to not drift into the other lane with oncoming traffic. Under these facts, it can reasonably be said that but for the DACS employee drifting out of his lane, the collision would not have occurred, and Claimant would not have experienced the loss, injury, and damages that are detailed in the findings of fact above.

The damages sought in this bill, $3,175,000, are reasonable given the outcome of the accident and Claimant's pain, suffering, loss of enjoyment of life, medical bills, lost wages, 85 year life expectancy, and future medical needs which are still developing.

ATTORNEY FEES:

Section 768.28(8), Florida Statutes, limits a claimant's attorney fees to 25 percent of any judgment or settlement. Claimant's attorney has agreed to this limit and included related lobbying fees within the limit, as follows:

- Attorney fees: 20 percent ($635,000); and
- Lobbyist fees: 5 percent ($158,750).

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that SB 70 be reported FAVORABLY.

Respectfully submitted,

Shirley Sharon
Senate Special Master

cc: Secretary of the Senate

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government

The committee substitute changes the funding source of the appropriation from the General Revenue Fund to the General Inspection Trust Fund within the Department of Agriculture and Consumer Services.

513390

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Rouson) recommended the following:

Senate Amendment

Delete line 73

and insert:

General Inspection Trust Fund to the Department of Agriculture and

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 25, 2022

I respectfully request that **Senate Bill #70**, relating to Relief of Donna Catalano by the Department of Agriculture and Consumer Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Darryl Ervin Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By:	The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government
BILL:	PCS/CS/SB 186 (804270)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Citizens Property Insurance Corporation
DATE:	February 18, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 186 revises Citizens Property Insurance Corporation (Citizens or corporation) eligibility criteria, rates, assessment surcharges on Citizens' policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill makes it a requirement, rather than an option, that Citizens Property Insurance Corporation merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.

The bill provides Citizens residential policyholders are ineligible for renewal with Citizens if an offer of coverage is received from an authorized insurer, unless that offer presents a premium that is more than 20 percent greater than the Citizens renewal premium for comparable coverage. Under current law, Citizens policyholders remain eligible unless they receive an offer of comparable coverage which has a premium of less than the Citizens renewal premium.

The bill increases the maximum surcharge that may be levied on Citizens' policyholders if Citizens projects a deficit in one of its accounts to: 20 percent of premium if Citizens has one million policyholders but less than 1.5 million policyholders; and 25 percent of premium if

Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts.

The bill provides that when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans if Citizens' policy count exceeds 700,000 policies. Citizens policy count was 759,305 policies as of December 31, 2021. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explain surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than $700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of $700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than the premium for Citizens coverage.

The bill also:

- Defines "primary residence" and revises the application of the Citizens' rate increase restriction glide path to only apply to personal lines residential policies covering a policyholder's primary residence and single commercial lines residential policies;
-
- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to section 627.3517, Florida Statutes, and reenacts and makes conforming changes to section 627.3518, Florida Statutes.

The bill has an indeterminate fiscal impact to state revenues and expenditures. *See* **Section V. Fiscal Impact Statement.**

The bill takes effect January 1, 2023.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens

[1] Admitted market means insurance companies licensed to transact insurance in Florida.

is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[3] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.[4] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[5]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[6]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[7]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[8] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[9]

---

[2] Section 627.351(6)(a)1., F.S.
[3] Section 627.351(6)(a)2., F.S.
[4] Section 627.351(6)(c)4.a., F.S.
[5] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 22, 2022).
[6] *Id.*
[7] *Id.*
[8] Section 10, ch. 2013-60, L.O.F.
[9] Section 627.3518(2)-(3), F.S.

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of $232,502,323,529.[10] The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248
	Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance[11]

These numbers do not reflect policies tagged for takeout via Citizens' depopulation program but still serviced by Citizens.[12] From December 2020 to December 2021, Citizens' policy count grew by nearly 40 percent, adding 216,566 total policies in force.[13] Citizens has expressed that it expects to exceed one million policies in force in 2022.[14]

Citizens Glide Path Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Under the originally established glide path, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage

[10] Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, https://www.citizensfla.com/-/20211231-policies-in-force (last visited Jan. 22, 2022).
[11] *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.
[12] *Id.*
[13] Citizens Property Insurance Corporation, *Policies in Force*, https://www.citizensfla.com/policies-in-force (last visited Jan. 22, 2022).
[14] Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), *available at* https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations.

changes and surcharges. In 2021, the Legislature revised this glide path to increase it one percent per year to 15 percent, as follows: [15]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[16] In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[17]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[18] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[19] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[20] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[21] Citizens may impose three assessment tiers and their sequence is as follows:[22]

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[23]

---

[15] Section 627.351(6)(n)5., F.S.
[16] Section 627.351(6)(n)7., F.S.
[17] Section 627.351(6)(n)6., F.S.
[18] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 22, 2022).
[19] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 22, 2022).
[20] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[21] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351(6)(b)3.f.-h., F.S.
[22] Citizens Property Insurance Corporation, *supra* note 19.
[23] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 19.

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[24] This assessment is not levied against Citizens' policyholders.

Emergency Assessment – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[25]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the Office of Insurance Regulation (OIR) and are set out in Citizens' underwriting manuals.[26]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more. [27] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[28]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[29] Structures with a dwelling replacement cost of $700,000 or more, or a single

[24] Section 627.351(6)(b)3.a., F.S.
[25] Section 627.351(6)(b)3.d., F.S.
[26] *See* Citizens Property Insurance Corporation *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 22, 2022).
[27] Section 627.351(6)(c)5., F.S.
[28] Section 627.351(6)(c)5., F.S.
[29] Section 627.351(6)(a)3., F.S.

condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[30] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[31]

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[32] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[33] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[34]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.[35] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[36]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S.,

[30] Section 627.351(6)(a)3.d., F.S.
[31] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Jan. 22, 2022). *See also* Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits (last visited Feb. 8, 2022).
[32] Section 627.351(6)(q)3.a., F.S.
[33] Chapter 2016-229, L.O.F.
[34] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.
[35] FLA. CONST. art. I, s. 24(a).
[36] *Id*.

provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.[37] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[38] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 627.351(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Pursuant to sub-sub-paragraphs 1.a.-b., these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files; and
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

The public records exemption authorizes the sharing of certain files and information for the purpose of depopulating Citizens. If an authorized insurer is considering underwriting a risk insured by Citizens, relevant underwriting files and confidential claims files may be released to the insurer if the insurer agrees in a sworn writing to maintain the confidentiality of the files. Citizens may also release such files to the staff and board of governors of the market assistance plan established by s. 627.3515, F.S., who also must maintain confidentiality, and may share such files with authorized insurers considering writing those risks if the authorized insurer agrees to maintain confidentiality. Citizens may also release the name, address, and phone number of a residential property owner or insured, the location of the risk, rating information, loss history, and policy type to an entity that has obtained a permit to become an authorized insurer, a reinsurer under s. 624.610, F.S., a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines agent. The recipient of such information must maintain confidentiality.

Insurer Insolvency

Federal law specifies insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.[39] Insurers are either "rehabilitated" or "liquidated" by the state.

[37] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2022&DocumentType=The+Rules+Of+The+House+of+Representatives&FileName=2020-2022+House+Rules+-++Edition+1.pdf (last visited Jan. 22, 2022).

[38] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

[39] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is

Typically, insurers are put into liquidation when the company is or is about to become insolvent;[40] whereas, insurers are placed in rehabilitation[41] for numerous reasons, one of which is the insurer is impaired or failed to comply with an order of the Office of Insurance Regulation (OIR) to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding[42] and the placement of an insurer under the control of the DFS as the receiver. The DFS, as receiver, has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.[43]

If an insurer is placed under liquidation, Citizens may, if ordered by a court of competent jurisdiction, assume policies or otherwise provide coverage for policyholders of said insurer under such forms, rates, terms, and conditions as the corporation deems appropriate. Such forms, rates, terms, and conditions are subject to approval by the OIR.

III. Effect of Proposed Changes:

Section 1 revises s. 627.021, F.S., to specify the current inapplicability of the Rating Law under ch. 627, F.S., to surplus lines insurance placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., does not apply to provisions of the Rating Law that are specifically stated to be applicable to surplus lines insurance.

Section 2 amends s. 627.351(6), F.S., to revise criteria for Citizens eligibility, provide an escalating cap to the Citizens policyholder surcharge, limit producing agent commissions, authorize surplus lines insurers to develop Citizens "take-out" plans, and provide additional exceptions to a public records exemption.

Combining of Personal Lines Accounts (PLA), Commercial Lines Account (CLA), and Coastal Accounts

The bill revises s. 627.351(6)(b)2.b., F.S., to make it a requirement, rather than an option, for Citizens Property Insurance Corporation (Citizens) to merge its PLA, CLA, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer

consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).
[40] Section 631.061, F.S.
[41] Section 631.051, F.S.
[42] Section 631.031, F.S.
[43] Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes,* https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary (last visited December 29, 2021).

outstanding. Presently, these obligations are still outstanding, so this provision would not have an immediate effect.

Surcharge Levied on Citizens' Policyholders for Projected Account Deficits and For Primary Residence Policies

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' Board of Governors determines Citizens has a projected deficit. The 15 percent cap is replaced with an escalating cap for Citizens' policyholders, based upon the total number of Citizens' policyholders if:

- Citizens has less than one million policyholders, the premium surcharge cap is 15 percent per account;
- Citizens has at least one million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account; and
- Citizens has at least 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

Citizens' Glide Path Rates

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens "glide path" to personal lines residential policies covering an insured's primary residence and any single commercial lines residential policy. "Glide path" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. Under the glide path, the maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[44] This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines primary residence as "means a risk that has a dwelling replacement cost of less than $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost of less than $700,000 and the insured has represented such dwelling as its permanent home." Spouses are limited to having only one primary residence insured with Citizens.

Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums

The bill revises s. 627.351(6)(c)5.a., F.S., to state that for a personal lines residential policy, it is ineligible for renewal with the Citizens if a an offer of coverage is received from an authorized insurer, unless that offer presents a premium is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

[44] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's current 11 percent limit on annual rate increases (which will increase by one percent each year to 15 percent in 2026).

Limitations on Commissions

In the proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

Rates for Policies Assumed from Unsound Insurers

The bill creates a new s. 627.351(6)(n)8., F.S., specifying when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer. The provision also defines "unsound insurer" as an insurer determined by the Office of Insurance Regulation (OIR) to be in unsound condition as defined in s. 624.80(2), F.S.[45], or an insurer placed in receivership under chapter 631, F.S.

Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans

The bill revises. 627.351(6)(q)3.d., F.S., to allow eligible surplus lines insurers to participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer if Citizens' policy count more than 700,000 within the 30 days before the time a takeout offer is made by a surplus lines insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure the insurer:

- Maintains surplus of $50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;[46]
- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outlines any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and

[45] Section 624.80(2), F.S., defines "unsound condition" to mean that the OIR has determined that one or more of the following conditions exist with respect to an insurer: (a) the insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law; (b) the insurer continues to write new business when it has not maintained the required surplus or capital; (c) The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to the office, for liabilities arising from insurance policies issued by the insurer; or (d) the insurer meets one or more of the grounds in s. 631.051 for the appointment of the DFS as a receiver.

[46] The insurer also must submit such reinsurance to the OIR for review.

- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;[47]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;[48]
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of $700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of $700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than that

[47] This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.
[48] The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below $700,000 or a single condominium unit with a combined dwelling and contents replacement cost below $700,000. Such policyholders would maintain eligibility for coverage with Citizens.

Underwriting and Confidential Claim Files

The bill revises an existing public records exemption[49] under s. 626.916(1)(x)2., F.S., that allows authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill authorizes reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state to also have access to such underwriting files and confidential claims. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

Section 3 of the bill makes technical changes to s. 627.3517, F.S.

Section 4 of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)(a) and (7)(a), F.S., to implement revisions made by **Section 2** of the bill above.

Section 5 specifies an effective date of January 1, 2023 for the bill.

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:

The Florida Constitution provides no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each house of the Legislature.[50] For purposes of this requirement, a "fee"

[49] Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.
[50] Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.

is any charge or payment required by law. This includes any fee or charge for services and fees or costs for licenses. To "raise" a fee or tax means to:[51]

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.[52]

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.[53]

Pursuant to s. 627.351(6)(a)1., F.S., Citizens was created as "integral part of the state." To that end, a fee or charge for service, required by statute and assessed by Citizens, may qualify as a "fee" under Fla. Const. art. VII, s. 19(d)(1). CS/SB 186 contains a provision that requires a five dollar surcharge to be collected by Citizens upon the renewal of a primary residence policy. This new surcharge may qualify as a new fee under Fla. Const. art. VII, s. 19, and therefore would require a separate bill and a two-thirds affirmative vote for passage.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises the surcharge limits that Citizens Property Insurance Corporation (Citizens) may charge its primary residence policyholders when a Citizens' account shortfall is projected, which may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' primary residence policyholders. However, the collection of additional funds through the primary residence policyholder surcharge may, in some circumstances, result in less funds being necessary to collect through regular assessments or emergency assessments.

[51] Fla. Const. art. VII, s. 19(d).
[52] Fla. Const. art. VII, s. 19(e).
[53] Fla. Const. art. VII s. 19(c).

The bill provides Citizens' residential policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 20 percent greater than the renewal premium for comparable Citizens' coverage. This will result in ineligibility for some Citizens' policyholders, and up to 20 percent higher premiums for some such customers when their policy is taken out of Citizens. However, to the extent this change serves to depopulate Citizens it will reduce the likelihood Citizens will need to impose policyholder surcharges and assessments upon a deficit in a Citizens account.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans, when Citizens' policy count reaches 700,000 policies, will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers due to increased competition. However, policyholders covered by surplus lines insurance would not have the protection afforded by Florida Insurance Guaranty Association (FIGA) when an authorized insurer becomes insolvent.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans, under certain conditions, requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral Management and to make regular filings with the Office of Insurance Regulation. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens' eligibility criteria should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments.

VI. Technical Deficiencies:

Section 2 revises s. 627.351(6)(b)2.b. to require Citizens Property Insurance Corporation (Citizens) to combine its Personal Lines Account (PLA), Commercial Lines Account (CLA), and Coastal Account once certain financial obligations are satisfied. In order to effectuate this change, and maintain Citizens' current authorities, additional substantive and conforming changes to statute may be needed, including revising:

- Section 627.351(6)(b)2.a. which specifies all revenues, assets, liabilities, losses, and expenses of the Citizens be divided into its PLA, CLA, and Coastal Accounts; and
- Section 627.351(6)(c) providing Citizens plan of operation which specifies the types of lines which may be written under the PLA, CLA, and Coastal Accounts.

VII. Related Issues:

A proposed provision in the bill limits the commissions Citizens Property Insurance Corporation (Citizens) may pay to producing agents of record to no more than the average of commissions

paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida. If Citizens is unable to obtain information regarding the commissions paid by such insurers, Citizens may be unable to calculate the statutorily required limit of producing agent commissions.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.021 and 627.351.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute:

- Revises the application of the Citizens' rate increase restriction glide path to only apply to personal lines residential polices covering the policyholder's primary residence and single commercial lines residential policies; and
- Removes the five dollar policy surcharge collected upon renewal of all policies listed as primary residences.

CS by Banking and Insurance on January 25, 2022:
The CS makes several substantive revisions to the bill:

- Requires that Citizens Property Insurance Corporation (Citizens) merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.
- Provides that when Citizens Property Insurance Corporation assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer's premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.
- Creates a $5 surcharge upon renewed Citizens' primary residence policies and revises the definition of "primary residence" to limit it to only a dwelling with a replacement cost of less than $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost of less than $700,000.

- Specifies that a risk is not eligible for coverage with Citizens unless the premium for renewal coverage from an authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.
- Specifies that for a surplus lines insurer to participate in a takeout program as specified in the original bill, the policy count of Citizens must be more than 700,000 properties. Also specifies that, for risks that have a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000, such risks are not eligible for coverage by Citizens offered comparable coverage from a qualified surplus lines insurer at a premium no greater than that of Citizens.

B. Amendments:

None.

157680

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 367 - 370

and insert:

j. If the amount of any assessments or surcharges collected

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

And the title is amended as follows:

Delete lines 9 - 11

and insert:

157680

certain circumstances; defining the term "primary

202280

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 964 - 965

and insert:

not exceed the following for any single personal lines residential policy that covers an insured's primary residence issued by the corporation or any single commercial lines residential policy issued by the corporation, excluding coverage changes and surcharges:

202280

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 15
and insert:
commission rates; revising the policies to which annual rate increases apply; requiring that policies assumed by

By the Committee on Banking and Insurance; and Senator Brandes

597-02315-22 2022186c1

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; requiring, rather than authorizing, the corporation to use a single account under certain circumstances; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; requiring the corporation to annually collect a specified surcharge upon renewal on certain policies; defining the term "primary residence"; revising conditions for eligibility for coverage with the corporation to require a certain minimum premium; specifying a limit for agent commission rates; requiring that policies assumed by the corporation from unsound insurers be charged a specified premium until certain conditions are met; defining the term "unsound insurer"; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks that are offered coverage from qualified surplus lines insurers;

597-02315-22 2022186c1

authorizing information from underwriting files and confidential claims files to be released under certain circumstances by the corporation to specified entities that consider writing or underwriting risks insured by the corporation; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; making technical changes; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S., and reenacting paragraphs (6)(a) and (7)(a) of that section, relating to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program, to incorporate the amendments made to s. 627.351, F.S., in references thereto; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (b), (c), (n), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial

residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding

financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral~~,~~ which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation shall ~~may~~ use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in

sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior

calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered

through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption,

or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines

of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance

Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge must ~~shall~~ be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, and must ~~which funds shall~~ be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium.

(B) If the total number of policyholders of the corporation

is at least 1 million but less than 1.5 million, a surcharge of 20 percent of the premium.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. The corporation shall annually collect a surcharge of $5 upon renewal on all policies listed as a primary residence with the corporation.

k. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-

subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(II) "Primary residence" means a risk that has a dwelling replacement cost of less than $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost of less than $700,000 and the insured has represented such dwelling as its permanent home on the insurance application or otherwise to the corporation. A policyholder and the policyholder's spouse may not collectively have more than one primary residence insured with the corporation.

(III) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set

forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(I) ~~(II)~~ "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the

corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such

financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The

Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the

Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation.

Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal~~ from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept

appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for

the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance

with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized

insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation must ~~shall~~ be construed as the private placement of insurance, and

~~the provisions of~~ chapter 120 does ~~do~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage

and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be

deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant~~,~~ which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,

MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

22. The corporation shall pay a producing agent of record a

reasonable commission not to exceed the average of commissions paid in the preceding year by the 20 admitted insurers writing the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. If ~~After~~ the public hurricane loss-projection model under s. 627.06281 is ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, it must ~~the model shall~~ be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially

sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that ~~which~~, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. must ~~shall~~ cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

8. Policies assumed by the corporation from an unsound insurer shall be charged a premium for coverage that is the higher of the last premium amount charged by the unsound insurer or the premium charged by the corporation applicable to the policy. Premiums established by the unsound insurer shall remain unchanged until such time as the corporation's rate exceeds this

amount and the policy becomes subject to the corporation's annually approved rate. For purposes of this subparagraph, the term "unsound insurer" means an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in s. 624.80(2) or an insurer placed in receivership under chapter 631.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided

in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the

holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~ not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is

entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage

made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) The policy count of the corporation must be more than 700,000 within the 30 days before the time a takeout offer is made by a surplus lines insurer.

(II) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(III) In considering a surplus lines insurer's request for approval for its plan, the office shall determine whether the surplus lines insurer meets the following requirements:

(A) Maintains a surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not

provided coverage by the Florida Insurance Guaranty Association and provides an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(IV) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, which, in the case of statements originally made in the currencies of other countries, expresses all monetary values in United States dollars, at an exchange rate then current and shown in the statement, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the statement required by sub-sub-sub-subparagraph (D); and

(F) If applicable, a copy of the United States trust

account agreement.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), or (e).

(V) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit to the Bureau of Collateral Management within the Department of Financial Services a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business. The surplus lines insurer shall submit to the office, along with the special deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to the accuracy of the accounting by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after the end of each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of

liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(VI) In advance of a surplus lines insurer assuming a policy, surplus lines brokers representing a surplus lines insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation must give priority to the offer of coverage from the authorized insurer.

(VII)(A) A risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation if it is offered comparable coverage from a qualified surplus lines insurer at a premium no greater than the premium charged by the corporation.

(B) A risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation if it is offered

coverage from a qualified surplus lines insurer.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or

assumed without obtaining approval from the office for use of such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-

client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must ~~shall~~ be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an

application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided that the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk;

rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State

Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s.

627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Subsection (5) of section 627.3518, Florida Statutes, is amended, and paragraph (a) of subsection (6) and paragraph (a) of subsection (7) of that section are reenacted, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from

the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event that an offer of coverage for a new applicant or a personal lines risk at renewal is received from an authorized insurer through the program, and the premium offered exceeds the eligibility thresholds specified ~~threshold contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. ~~In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation.~~ Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the

offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 5. This act shall take effect January 1, 2023.

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 27, 2022

I respectfully request that **Senate Bill # 186,** relating to Citizens Property Insurance Corporation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2/16/2022
Meeting Date

Approps Subcommittee Ag, Env, + ED
Committee

SB 186
Bill Number or Topic

Amendment Barcode (if applicable)

Name PAUL HANDERHAN

Phone 561-704-0428

Address 120 S. Monroe Street
Street

Email Paul@ramba consulting.com

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:
FAIR

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Ag, Enviro & Gen Gov
Committee

SB 180
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St
Street

Tallahassee
City State Zip

Email

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:
FL Chamber of Commerce

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-16-22
Meeting Date

Approps Sub Ag, Envir + GG
Committee

186
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christine Ashburn

Phone 850-513-3746

Address 2103 Maryland Circle
Street

Tallahassee FL 32303
City State Zip

Email christine.ashburn@citizensfla.com

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: Citizens Property Ins

☐ 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.

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.)

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

BILL:	PCS/CS/SB 954 (351370)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Governmental Oversight and Accountability Committee; and Senator Brodeur and others
SUBJECT:	Energy
DATE:	February 18, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 954 revises the vehicle procurement requirements for the state purchasing plan. Specifically, the bill requires vehicles of a given use class be selected for procurement based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, rather than based on the greatest fuel efficiency available when fuel economy data is available.

The bill also removes current requirements placed on state agencies to use ethanol and biodiesel fuel when available and on certain entities to procure biofuels for fleet when possible.

The bill requires the DMS, by July 1, 2023, to make recommendations regarding the procurement of electric vehicles and natural gas fuel vehicles and the best practices for integrating these vehicles into existing fleets.

The bill expands the definition of single-trade inspection for purposes of building code inspection services to include inspections of the installation of electric vehicle charging stations and solar energy and energy storage installations or alterations.

The impact on state revenues and expenditures is unknown at this time. The bill is not expected to impact local government revenues or expenditures.

The bill takes effect July 1, 2022.

II. Present Situation:

Procurement of Commodities or Contractual Services

Chapter 287, F.S., specifies the procedures for the procurement of commodities or contractual services. The DMS oversees state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[1] The DMS establishes purchasing agreements and procures state term contracts for commodities and contractual services, and establishes uniform procurement policies, rules, and procedures.[2] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. The DMS is directed to consider the life-cycle cost of commodities when purchased by the state.[3] Section 287.83, F.S., authorizes the DMS to establish energy-efficiency standards for major energy-consuming products.

State agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,[4] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,[5] used when an agency determines that standard services or goods will meet needs, wide competition is available and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,[6] used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,[7] used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of $35,000, agencies must use a competitive solicitation process.[8] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[9]

Climate-friendly Public Business

Section 286.29, F.S., requires state agencies:

[1] Sections 287.032 and 287.042, F.S.
[2] *Id*.; *see* Fla. Admin. Code, ch. 60A-1002.
[3] Section 287.083(1), F.S.
[4] Section 287.057(3)(c), F.S.
[5] Section 287.057(1)(a), F.S.
[6] Section 287.057(1)(b), F.S.
[7] Section 287.057(1)(c), F.S.
[8] Section 287.057(1), F.S.
[9] Section 287.057(3)(e), F.S.

- To consult with the "Florida Climate-Friendly Preferred Products List,"[10] in procuring products from state term contracts.[11] If the price is comparable, then they shall procure such products.[12]
- To contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program.[13,14]
- To ensure vehicles meet minimum maintenance schedules shown to reduce fuel consumption and report such compliance to the DMS.[15] When procuring new vehicles, to define the intended purpose for such vehicle which will then be chosen based on greatest fuel efficiency available for a given use class, when fuel economy data is available.[16]
- To use ethanol and biodiesel blended fuels when available.[17]
- That administer central fueling operations to procure biofuels for fleet, to the greatest extent practicable.[18]

Florida Building Codes

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Building Code). The purpose and intent of the Building Code is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair or demolition of public or private buildings, structures, or facilities in Florida. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[19]

Contractors and property owners are permitted to hire licensed Building Code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.[20] A private provider and any duly

[10] The Department of Management Services (DMS) keeps a Florida Climate-Friendly Preferred Products List at https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate_friendly_preferred_products_list, (last visited Feb. 7, 2022).
[11] Section 286.29(1), F.S.
[12] *Id.*
[13] The Florida Department of Environmental Protection designates and recognizes lodging facilities that make a commitment to conserve and protect Florida's natural resources through the Florida Green Lodging Program. To become designated, facilities must conduct a thorough property assessment and implement a specified number of environmental practices in five areas of sustainable operations: (1) waste reduction, reuse and recycling; (2) water conservation; (3) energy efficiency; (4) indoor air quality; and (5) communication and education with customers, employees, and the public. See Green Lodging, https://floridadep.gov/osi/green-lodging/content/about-florida-green-lodging-program (last visited Feb. 7, 2022).
[14] Section 286.29(2), F.S.
[15] Section 286.29(3), F.S., requires state agencies to report compliance to the DMS through the Equipment Management Information System database. The DMS is implementing a new Statewide Fleet Management Information System that can be used to manage cost information and reports to ensure the effective and efficient use, operation, maintenance, repair, and replacement of motor vehicles, watercraft, and aircraft. See Fleet Management Information System, https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management/fleet_management_information_system (last visited Feb. 7, 2022).
[16] *Id.*
[17] Section 286.29(5), F.S.
[18] *Id.*
[19] Section 553.72(1), F.S.
[20] Section 553.791, F.S.

authorized representative may only perform building code inspection services that are set forth in statute, including single-trade inspections. A "single-trade inspection" is defined:

> any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.[21]

A private provider cannot provide building code inspection services to any building designed or constructed by the private provider or the private provider's firm.[22] A fee owner or the fee owner's contractor using a private provider to provide building code inspection services must notify the local building official in writing that a private provider has been contracted to perform the required inspections of construction, including single-trade inspections.[23] If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by such private providers the fee owner's contractors must update the notice to reflect such changes.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 286.29, F.S., to require vehicles of a given use class be selected for procurement based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, rather than based on the greatest fuel efficiency available when fuel economy data is available. The section deletes the current law requirements on state agencies to use ethanol and biodiesel fuel when available. It also removes the requirement that state agencies administering central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.

Section 2 requires the DMS to make recommendations before July 1, 2023, to state agencies, including state colleges and universities, and local governments regarding the procurement of electric vehicles and natural gas fuel vehicles and the best practices for integrating those vehicles into existing fleets.

Section 3 amends s. 553.791, F.S., to expand the definition of "single-trade inspection" to include the inspection of an installation of electric vehicle charging stations and solar energy and energy storage installations or alterations.

Section 4 provides the bill takes effect July 1, 2022.

---

[21] *Id.*
[22] *Id.*
[23] Section 553.791(4), F.S.
[24] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact on state revenues and expenditures is unknown at this time. The DMS states that modifications, including a possible configuration in the Fleet Management Information System (FleetWave system), will need to be made to capture information needed to make recommendations.[25] The bill is not expected to impact local government revenues or expenditures.

VI. Technical Deficiencies:

None.

[25] *See* DMS, *2022 Agency Legislative Bill Analysis for SB 954*, at p. 4 (Dec. 2, 2021)(on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 286.29 and 553.791 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute:

- Requires state agencies rather than the DMS, to procure vehicles based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance;
- Eliminates the provision in the bill that requires the DMS to procure vehicles based on certain criteria over five years, rank vehicles based on the lowest cost of ownership over five years, and publish the rankings on its website; and.
- Requires the DMS to include natural gas fuel vehicles in its recommendation regarding procurement and integration.

CS by Governmental Oversight and Accountability on January 13, 2022:
The committee substitute does the following:

- Specifies that the DMS must procure vehicles based on the lowest lifetime ownership cost over five years.
- Requires the DMS to rank their vehicles annually based on the lowest lifetime ownership cost of five years, and then publish the rankings on its website.
- Requires that any vehicle purchased under the state's purchasing plan that is a sedan or light truck be ranked in the top five of the DMS's rankings.
  - Allows for exceptions to be made if approved by the secretary of the DMS and the secretary states the reason for the exemption.
- Exempts law enforcement from the top-five ranking requirement.

B. Amendments:

None.

520676

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 81

and insert:

based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, ~~for the greatest fuel efficiency available~~ for a given use class ~~when fuel economy data are available~~. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the

520676

operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

~~(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.~~

Section 2. Before July 1, 2023, the Department of Management Services shall make recommendations to state agencies, including state colleges and universities, and local governments regarding the procurement of electric and natural gas fuel vehicles and

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

And the title is amended as follows:

Delete lines 6 - 20

and insert:

removing a provision requiring the use and procurement of ethanol and biodiesel fuels; requiring the Department of Management Services, before a specified date, to make recommendations to state agencies and local governments relating to the procurement and integration of electric and natural gas fuel vehicles;

By the Committee on Governmental Oversight and Accountability; and Senators Brodeur and Brandes

585-01992-22 2022954c1

A bill to be entitled

An act relating to energy; amending s. 286.29, F.S.; revising the selection criteria for purchasing or leasing vehicles for state agency, college, or university or certain local government fleets; requiring the Department of Management Services, using available industry data, to rank certain vehicles based on the lowest lifetime ownership costs over a specified number of years, rather than fuel efficiency, and to publish the rankings to the department's website; requiring that certain vehicles purchased under a state purchasing plan be ranked at a specified level unless an exception is approved by the department secretary; exempting law enforcement vehicles from the ranking requirement; removing a provision requiring the use and procurement of ethanol and biodiesel fuels; requiring the department, before a specified date, to make recommendations to state agencies and local governments relating to the procurement and integration of electric vehicles; amending s. 553.791, F.S.; revising the definition of the term "single-trade inspection"; providing an effective date.

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

Section 1. Subsections (4) and (5) of section 286.29, Florida Statutes, are amended to read:

286.29 Climate-friendly public business.—The Legislature

585-01992-22 2022954c1

recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:

(a) State business travel, designated operator;

(b) State business travel, pool operators;

(c) Construction, agricultural, or maintenance work;

(d) Conveyance of passengers;

(e) Conveyance of building or maintenance materials and supplies;

(f) Off-road vehicle, motorcycle, or all-terrain vehicle;

(g) Emergency response; or

(h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected based on the lowest lifetime ownership costs over 5 years as determined by the Department of Management Services. On an annual basis, the department shall rank vehicles based on the lowest cost of ownership over 5 years using available industry data and publish the rankings on the department's website. Any vehicle that is a sedan or a light truck and is purchased under a state purchasing plan must be ranked in the top five of the

department's rankings unless an exception is approved by the secretary of the department and the secretary states the reason for the exception. Law enforcement vehicles are exempt from the top-five ranking requirement ~~for the greatest fuel efficiency available for a given use class when fuel economy data are available~~. ~~Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.~~

~~(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.~~

Section 2. Before July 1, 2023, the Department of Management Services shall make recommendations to state agencies, including state colleges and universities, and local governments regarding the procurement of electric vehicles and best practices for integrating such vehicles into existing fleets.

Section 3. Paragraph (p) of subsection (1) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

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

(p) "Single-trade inspection" means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; installation of electric vehicle charging stations; solar energy and energy storage installations or alterations; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.

Section 4. 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 Environment.

Subject: Committee Agenda Request

Date: January 13, 2022

I respectfully request that **Senate Bill 954**, relating to **Energy**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

AEG 1-3 110 SBldg
Committee

954
Bill Number or Topic

520676
Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 9830 ELM ST
Street

Email cullenasea@gmail.com

OCEAN CITY MD 21842
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:
SIERRA CLUB FLORIDA

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

AEG 1-3 110 SBldg
Committee

954
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 9830 ELM ST
Street

Email cullenasea@gmail.com

OCEAN CITY MD 21842
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:
SIERRA CLUB FLORIDA

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

CS/SB 954
Bill Number or Topic

Sen Appropriations Sub. Ag and Exec Dev't
Committee

Amendment Barcode (if applicable)

Name DIANE CARR

Phone 850.210.4024

Address 537 E Park Ave
Street

Email diane@ficanj.com

Tall, FL 32301
City State Zip

Johnson & Blanton, PLLC

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:

ALLIANCE FOR AUTOMOTIVE INNOVATION

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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Ag, Enviro and Gen. Gov Approps
Committee

954
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Potts

Phone 850-591-5921

Address 113 E. College Ave.
Street

Email adam@libertypartnersfl.com

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:
Advanced Energy Economy (AEE)

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

02-16-22
Meeting Date

SB 954
Bill Number or Topic

Appropriations Sub on Agriculture, Environment, & General Government
Committee

Amendment Barcode (if applicable)

Name Vi Rogers-Rivera

Phone 786-997-3295

Address 9520 SW 105 AVE
Street

Email VSrogersrivera@gmail.com

Miami FL 33176
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:

ReThink Energy Action Fund

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.

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.)

Prepared By:	The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government
BILL:	PCS/CS/SB 1426 (666660)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senator Burgess
SUBJECT:	Environmental Management
DATE:	February 18, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Reagan	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1426 creates the concept of water quality enhancement areas (WQEAs). A WQEA is a natural system that is constructed, operated, managed, and maintained pursuant to a permit to provide offsite, compensatory, regional treatment within an identified enhancement service area and enhancement credits.

The bill provides that construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. The bill sets out requirements for a water quality credit program based on the development of WQEAs and authorizes the Department of Environmental Protection (DEP) to develop rules to implement the program. Water quality enhancement credits may be sold only to governmental entities.

The bill makes clarifications regarding incentives for the use of graywater technologies.

According to the DEP, the department would incur costs from operating the WQEA program, as the program would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.

II. Present Situation:

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.[1] 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. 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.[2]

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.[3]

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.[4] Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the Department of Environmental Protection (DEP) must establish a TMDL for impaired waterbodies.[5] A TMDL for an impaired waterbody is the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.[6] Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.[7]

---

[1] U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, https://www.epa.gov/nutrientpollution/sources-and-solutions (last visited Jan. 26, 2022).
[2] *Id.*
[3] EPA, *The Issue*, https://www.epa.gov/nutrientpollution/problem (last visited Jan. 26, 2022).
[4] Department of Environmental Protection (DEP), *Total Maximum Daily Loads Program*, https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program (last visited Jan. 26, 2022).
[5] Section 403.067(1), F.S.
[6] Section 403.031(21), F.S.
[7] 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. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs.[8] Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,[9] for a watershed or a specific waterbody. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) 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.[10]

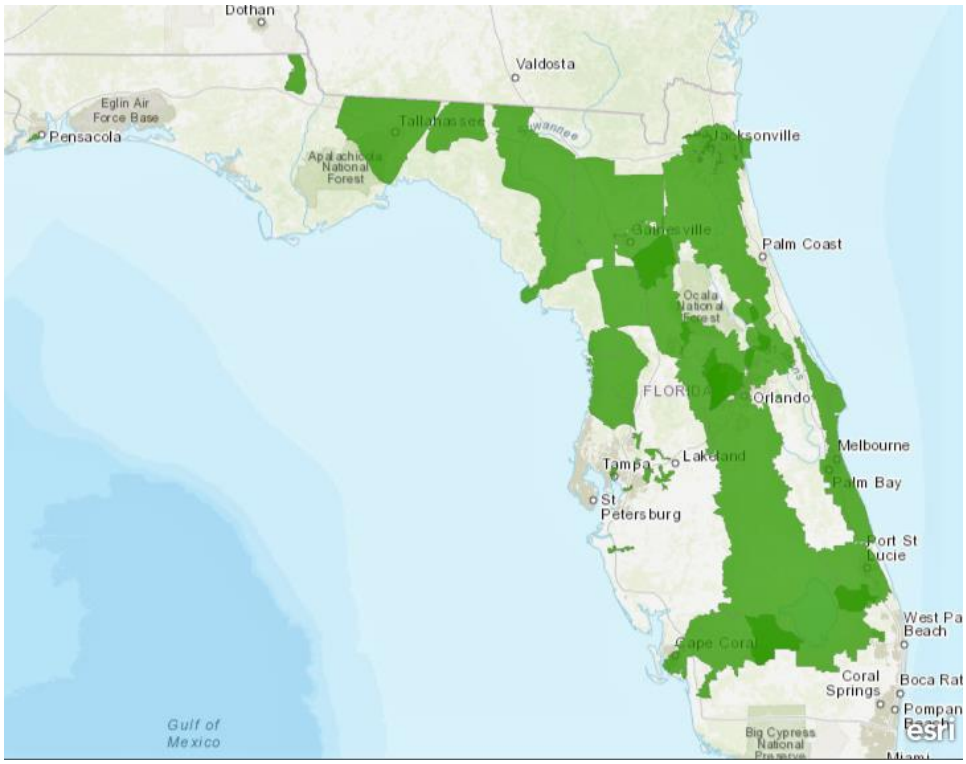
A BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.[11] Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to determine and share water quality cleanup responsibilities collectively.[12]

BMAPs must include milestones for implementation and water quality improvement.[13] 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.[14]

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.[15] A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district (WMD) based on a failure to implement these requirements.[16] BMPs are designed to reduce the amount of nutrients, sediments, and pesticides

[8] 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.
[9] 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.
[10] Section 403.067(7), F.S.
[11] *Id*.
[12] DEP, *Basin Management Action Plans (BMAPs)*, https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Dec. 4, 2019).
[13] Section 403.067(7)(a)6., F.S.
[14] *Id.*
[15] Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[16] Section 403.067(7)(b)2.h., F.S.

that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.[17] The graphic below shows the state's BMAPs.[18]



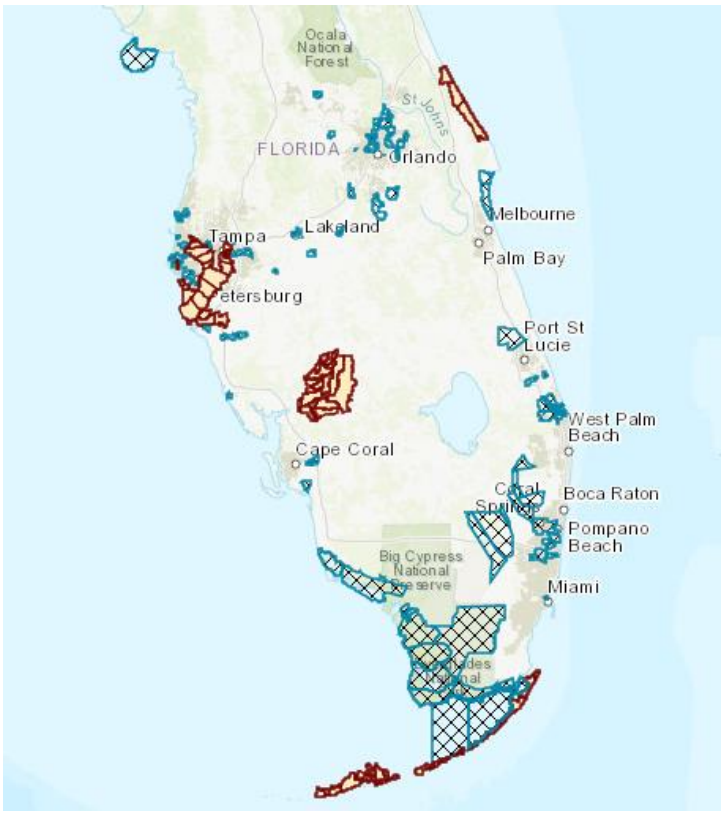
Reasonable Assurance Plans

The U.S. Environmental Protection Agency allows states to place certain impaired waterbodies into Category 4b for Clean Water Act section 303(d) reporting purposes, meaning that the establishment of a TMDL is not required for an impaired waterbody if other required control measures are expected to result in the attainment of water quality standards in a reasonable period of time.[19]

A Reasonable Assurance Plan (RAP) is a control measure that the DEP may implement for Category 4b impaired waterbodies.[20] The DEP first determines if a waterbody is impaired or may be reasonably expected to become impaired within the next five years.[21] If a waterbody fits this criteria, the DEP evaluates whether existing or proposed technology-based effluent limitations and other pollution control programs are sufficient to result in the attainment of water quality

[17] DEP, *NPDES Stormwater Program*, https://floridadep.gov/Water/Stormwater (last visited Jan. 26, 2022).
[18] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 26, 2022).
[19] *Id.*; EPA, *EPA Integrated Reporting (IR) Categories and How ATTAINS Calculates Them*, 1 (Aug. 31, 2018) *available at* https://www.epa.gov/sites/default/files/2018-09/documents/attains_calculations_of_epa_ir_categories_2018-08-31.pdf (last visited Jan. 27, 2022).
[20] DEP, *Alternative Restoration Plans*, https://floridadep.gov/DEAR/Alternative-Restoration-Plans (last visited Jan. 27, 2022).
[21] Fla. Admin. Code R. 62-303.600.

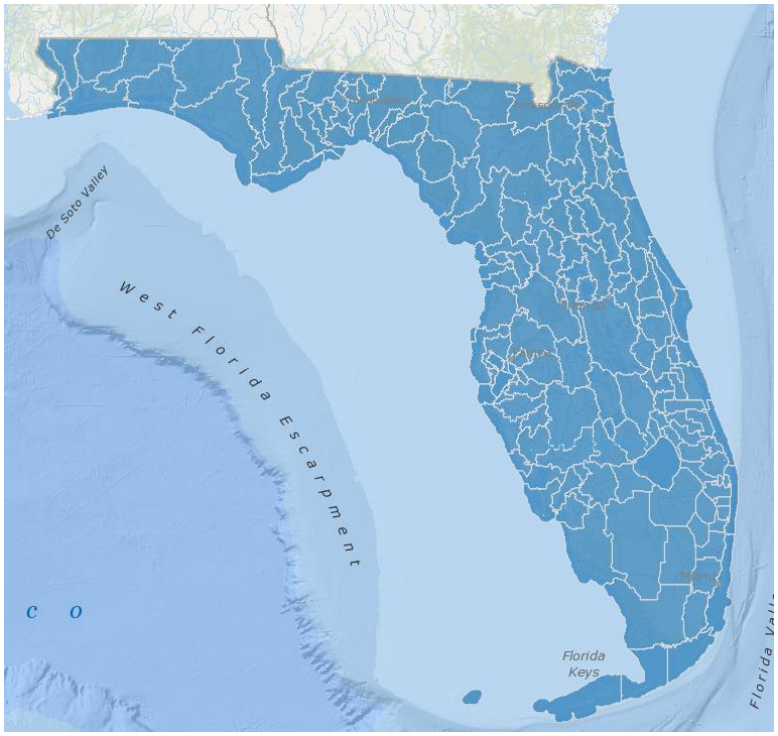
standards. If the waterbody is expected to attain water quality standards in the future and to make reasonable progress towards attainment of those standards in a certain timeframe, the waterbody will not require a TMDL. The DEP's decision must be based on a plan that provides reasonable assurance that proposed pollution control mechanisms and expected water quality improvements in the waterbody will attain water quality standards.[22] The graphic on the right shows the RAP boundaries in the outlined areas without a grid.[23]



Planning Units

A planning unit is either an individual large tributary basin or a group of smaller adjacent tributary basins with similar characteristics.[24] Planning units help organize information and management strategies around prominent watershed characteristics, and they provide a more detailed geographic basis for identifying and assessing water quality improvement activities.[25] The graphic on the next page shows the state's planning units.[26]

[22] *Id.*
[23] DEP, *Restoration Plans*, https://fdep.maps.arcgis.com/apps/View/index.html?appid=5a34b0e9d46447559b52d8267083596f (last visited Jan. 28, 2022).
[24] DEP, *TMDL Planning Units*, https://geodata.dep.state.fl.us/datasets/c97e066f49044131a13a79f5beeeaf40_6/about (last visited Jan. 27, 2022).
[25] *Id.*
[26] DEP, *TMDL Planning Units, Geospatial Open Data*, https://geodata.dep.state.fl.us/datasets/FDEP::total-maximum-daily-load-tmdl-planning-units/explore?location=27.664924%2C-83.725800%2C7.00 (last visited Jan. 28, 2022).



Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[27] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, trash, chemicals, and other pollutants.[28] Stormwater is a major source of water pollution in Florida.[29]

The regulatory programs that address reductions in water quality caused by stormwater are the federal National Pollution Discharge Elimination System (NPDES), which regulates discharges of pollutants into waters of the United States,[30] and the state Environmental Resource Permitting (ERP) Program, which regulates activities involving the alteration of surface water flows.[31]

---

[27] DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), *available at* https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf.

[28] DEP, *Stormwater Management*, 1 (2016), *available at* https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

[29] DEP, *Stormwater Support*, https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support (last visited Oct. 6, 2021); DEP, *Nonpoint Source Program Update*, 10 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf.

[30] National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342 (2019); 40 C.F.R. pt. 122; Under the Clean Water Act, the U.S. Environmental Protection Agency authorizes the NPEDS permit program to state, tribal, and territorial governments, enabling them to perform many of the permitting, administrative, and enforcement aspects of the program. EPA, *About NPDES*, https://www.epa.gov/npdes/about-npdes#overview (last visited Jan. 27, 2022).

[31] Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

The NPDES regulates stormwater pollution from certain municipal storm sewer systems and runoff from certain construction and industrial activities.[32] The state's ERP program regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[33] ERPs aim to prevent flooding, protect wetlands and other surface waters, and protect water quality from stormwater pollution.[34] The DEP, the WMDs, and local governments implement the ERP program.[35]

The DEP and the WMDs may require ERPs and impose reasonable conditions:

- To ensure that construction or alteration of stormwater management systems and related structures is consistent with applicable law and not harmful to water resources;[36] and
- For the maintenance or operation of such structures.[37]

The DEP's stormwater rules are technology-based effluent limitations, rather than water quality-based effluent limitations.[38] This means that stormwater rules rely on design criteria for BMPs to achieve a performance standard for pollution reduction, rather than specifying the amount of a specific pollutant that may be discharged to a waterbody and still ensure that the waterbody attains water quality standards.[39] The rules contain minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.[40]

The DEP and the WMDs require applicants to provide reasonable assurance that state water quality standards will not be violated.[41] If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or the WMDs, then the system design is presumed not to cause or contribute to violations of applicable state water quality standards.[42] If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then the

---

[32] Stormwater can be either a point source or a nonpoint source of pollution. EPA, *Monitoring and Evaluating Nonpoint Source Watershed Projects*, 1-1, *available at* https://www.epa.gov/sites/production/files/2016-02/documents/chapter_1_draft_aug_2014.pdf; DEP, *Nonpoint Source Program Update*, 9 (2015), *available at* https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf; *See generally* EPA, *NPDES Stormwater Program*, https://www.epa.gov/npdes/npdes-stormwater-program (last visited Jan. 26, 2022).

[33] DEP, *DEP 101: Environmental Resource Permitting*, https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 26, 2022).

[34] South Florida Water Management District, *Environmental Resource Permits*, https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 26, 2022).

[35] Fla. Admin. Code R. 62-330.010(3).

[36] Section 373.413, F.S.; *see* s. 403.814(12), F.S.

[37] Section 373.416, F.S.

[38] DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 26, 2022).

[39] See generally, EPA, *National Pollutant Discharge Elimination System (NPDES)*, www.epa.gov/npdes/npdes-permit-limits (last visited Jan. 26, 2022).

[40] Fla. Admin. Code R. 62-40.432(2).

[41] Section 373.414(1), F.S.; *see* s. 373.403(11), F.S.; *see* Fla. Admin. Code Ch. 62-4, 62-302, 62-520, and 62-550.

[42] Section 373.4131(3)(b), F.S. Fla. Admin. Code R. 62-40.432(2); *see also* DEP, *ERP Stormwater*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-stormwater (last visited Jan. 27, 2022) (stating that a key component of the stormwater rule is a "rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will not cause harm to water resources").

stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.[43] If an applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the DEP or a WMD must consider mitigation measures that cause a net improvement of the water quality in the waterbody that does not meet the standards.[44]

2020 Stormwater Rulemaking

In 2020, the Florida Legislature passed CS/SB 712, the Clean Waterways Act, to address known sources of nutrient pollution in waterways and to strengthen regulatory requirements.[45] The Clean Waterways Act required the DEP and the WMDs to update stormwater regulations to reflect the latest scientific information. In response, the DEP created the Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC). The TAC's goal is to develop and provide consensus stormwater rulemaking recommendations for the DEP and the WMDs.[46] The TAC's initial discussion topics were as follows:

- Options for identifying stormwater design criteria and BMPs that are effective for increasing nutrient removal from stormwater runoff;
- Measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody thought to be impaired by stormwater runoff; and
- Changes to improve existing stormwater operation regulations to ensure water resources are protected by the rulemaking directed under the Clean Waterways Act.[47]

Water Quality Credit Trading

Water quality credit trading is a market-based approach to water quality improvements that can be used to control pollutants from sources that collectively worsen water quality conditions.[48] Water quality credit trading allows one source of pollution to control a pollutant at levels greater than required and to sell the resulting water quality credits to another source to supplement its level of treatment to comply with pollutant regulations.[49] This practice must result in water quality that is as good as or better than what would be achieved through meeting pollutant level requirements and must not create pollutant hotspots.[50] Water quality credit trades may result in a broad area of water quality improvement, while causing acute or chronic localized effects, or hotpots.[51]

The Florida Statutes provide a framework for water quality credit trading in the state. The DEP is the agency responsible for authorizing water quality credit trading in adopted BMAPs and for

[43] Section 373.4131(3)(c), F.S.
[44] Section 373.414(1)(b)3., F.S.
[45] DEP, *Clean Waterways Act Stormwater Rulemaking Technical Advisory Committee (TAC)*, https://floridadep.gov/CWA-TAC (last visited Feb 1, 2022).
[46] *Id.*
[47] *Id.*
[48] EPA, *Water Quality Trading*, https://www.epa.gov/npdes/water-quality-trading (last visited Jan. 26 2022).
[49] *Id.*
[50] *Id.*
[51] *Id.*

establishing the pollutant load reduction value of water quality credits.[52] The DEP cannot participate in the establishment of water quality credit prices. Water quality credit sellers are responsible for achieving the load reductions on which the water quality credits are based and complying with the terms of the DEP authorization and any trading agreements into which they have entered; buyers are responsible for complying with the terms of the DEP water discharge permit.[53] Land set-asides and land use modification not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into impaired surface waters may be used for water quality credit trading.[54] In the past, water quality credits have been traded in the state, however there are no water quality credits available for trade as of January 28, 2022.[55]

Mitigation Banking

Generally, mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity to provide mitigation for unavoidable wetland impacts within a defined mitigation service area.[56] The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.[57] The number of potential credits permitted for the bank, and the credit debits required for impact permits, are determined by the permitting agencies.[58]

Creation of a mitigation bank in Florida requires both a permit from the DEP or a WMD, and federal approval of a mitigation bank instrument from several agencies led by the U.S. Army Corps of Engineers (USACE), in a joint state/federal interagency review team.[59] Through this process, depending on agency approval, a mitigation bank may provide mitigation for permittees under both the federal and state permitting programs.

Requirements for permitting mitigation banks differ between mitigation bank instruments issued by the USACE and state permits issued by the DEP or the WMDs. Under the federal process, a mitigation banking instrument serves as the legal document for the establishment, operation, and use of a mitigation bank.[60] They are approved by an interagency review team, through procedures involving public notice and comment.[61] Mitigation banking instruments must include

[52] Section 403.067(8), F.S.
[53] Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as establish by DEP rule. *Id.*
[54] *Id.*
[55] DEP, *Florida Water Quality Credit Trading Registry*, https://floridadep.gov/dear/water-quality-restoration/content/florida-water-quality-credit-trading-registry (Jan. 17, 2022); DEP, *Credits Traded Document* (Sept. 7, 2018) *available at* http://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/DEP%20WQCT%20Spreadsheet.pdf (last visited Jan. 27, 2022).
[56] DEP, *Mitigation and Mitigation Banking*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking (last visited Jan. 26, 2022).
[57] *Id*.
[58] *Id*.
[59] DEP, *Mitigation Banking Rule and Procedure Synopsis*, https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and (last visited Jan. 26, 2022).
[60] 33 C.F.R. s. 332.2.
[61] 33 C.F.R. s. 332.8; 40 C.F.R. s. 230.98.

certain detailed elements, such as a comprehensive mitigation plan including financial assurances, and a credit release schedule that is tied to the achievement of specific milestones.[62]

Under Florida law, to obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.[63]

The applicant must also provide reasonable assurance that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and rules adopted thereunder;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.[64]

Graywater, Residential Systems, and Development Incentives

Graywater is the part of domestic sewage that is not carried off by toilets, urinals, and kitchen drains. It includes waste from the bath, lavatory, laundry, and sink, except for kitchen sink waste.[65] Graywater installations occur in both residential and non-residential installations and the capture, treatment, and reuse of graywater yields usable water that would otherwise be directed to the sewer.[66] Reusing graywater also reduces the use of potable water for non-potable needs and conserves fresh water.[67]

The Florida Building Code specifies that graywater may only be used for flushing of toilets and urinals. Any discharge from the building must be connected to a public sewer or an onsite sewage treatment and disposal system in accordance with Department of Health regulations in

[62] *See generally* 33 C.F.R. s. 332.8(d)(6); *see also* 40 C.F.R. s. 230.98(d)(6).
[63] Section 373.4136(1), F.S.
[64] *Id*.; Fla. Admin. Code R. 62-342.400.
[65] Section 381.0065(2)(e), F.S.
[66] Alliance for Water Efficiency, *Graywater Systems*, https://www.allianceforwaterefficiency.org/resources/topic/graywater-systems (last visited Jan. 31, 2022).
[67] Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system (last visited Jan. 31, 2022).

chapter 64E-6 of the Florida Administrative Code.[68] Graywater systems in Florida have several requirements: the graywater must be filtered, disinfected, and dyed; and storage reservoirs must have drains and overflow pipes which must be indirectly connected to the sanitary drainage system.[69]

To encourage adoption of residential graywater reuse, states, counties, municipalities, or special districts are required to implement incentives for the use of graywater technologies.[70] To do this, they must authorize the use of residential graywater technologies in their respective jurisdictions and provide specific density or intensity bonuses to developers or homebuilders if a certain percentage of a proposed or existing development will have a graywater system installed.[71]

III. Effect of Proposed Changes:

Section 1 creates s. 373.4134, F.S. to authorize the creation of water quality enhancement areas (WQEAs). The bill lists the following legislative findings:

- Water quality will be improved and adverse water quality impacts of activities regulated under provisions of law relating to the management and storage of surface waters may be offset by WQEAs that provide offsite compensatory treatment;
- An expansion of existing authority for regional treatment to include offsite compensatory treatment in WQEAs to make water quality enhancement credits available for purchase by governmental entities to address impacts regulated by provisions of law relating to the management and storage of surface waters is needed;
- WQEAs will improve the certainty and long-term viability of water quality treatment systems;
- WQEAs are a valuable tool to assist governmental entities in satisfying the net improvement performance standard[72] to ensure significant reductions of pollutant loadings; and
- WQEAs that provide credits to governmental entities seeking permits under this bill and governmental entities seeking to meet an assigned basin management action plan (BMAP) allocation or reasonable assurance plan (RAP) are considered an appropriate and permittable option.

The bill provides the following definitions:

- "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed;
- "Governmental entities" means any political subdivision of this state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof;

[68] 2020 Florida Building Code – Plumbing, Seventh Edition (Dec. 2020), *available at* https://codes.iccsafe.org/content/FLPC2020P1.
[69] *Id*.
[70] Section 403.892(2), F.S.
[71] *Id*.
[72] If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or DEP shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Section 373.414(1)(b)3., F.S.

- "Natural system" means an ecological system supporting aquatic and wetland-dependant natural resources, including fish and aquatic and wetland –dependant wildlife habitats;
- "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this part for the purpose of providing offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be provided; and
- "Water quality enhancement area permit" means a permit issued for a WQEA which authorizes its construction, operation, management, and maintenance and the purchase and sale of credits.

The bill provides that the construction, operation, management, and maintenance of a WQEA must be approved through the environmental resource permitting (ERP) process. Department of Environmental Protection (DEP) rules pertaining to ERPs apply to WQEAs and credits. The bill provides that WQEA credits may be sold only to governmental entities. It provides that a WQEA must address contributions of pollutants or other constituents for those parameters in an enhancement service area that do not meet state water quality criteria. Further, the bill requires that a WQEA must use, create, or improve natural systems to improve water quality.

The bill allows a governmental entity to use a WQEA for its own water quality needs. However it may not act as a sponsor to construct, operate, manage, maintain, or market credits to third parties. Further, the bill prevents a local government from requiring a permit or otherwise regulating the operation of WQEAs. It provides that the issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

To obtain a WQEA permit, the bill directs an applicant to provide reasonable assurances that the proposed WQEA will:

- Meet the requirements for issuance of an ERP;
- Benefit water quality in the enhancement service area;
- Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality criteria;
- Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;
- Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of land within the WQEA; and
- Provide for permanent preservation of the site through a conservation easement.

The bill requires a WQEA permit to provide for the assessment, valuation, and award of credits based on units of pollutant removed. It requires the DEP to base its determination of the award of enhancement credits on standard numerical models or analytical tools that establish the WQEAs ability to remove pollutants or constituents.

The bill requires that if a BMAP exists for the watershed in which the WQEA is located, the applicant must use the same numerical models or analytical tools used for the BMAP in WQEA

permit application. If a BMAP does not exist for the watershed in which the WQEA is located, the bill provides that the applicant, with the approval of the DEP, may submit as part of the permit application model parameters and results used by the DEP to develop a BMAP for a watershed with similar characteristics and pollutants as that where the WQEA is to be located. The bill requires that if the DEP determines that its numerical model or analytical tool used for a BMAP is not appropriate for the proposed WQEA, the applicant must use a standard numerical model of analytical tool for the WQEA.

It requires a WQEA application to include the following information to assist the DEP in determining credits:

- Rainfall data over the longest period of record available collected from the closest site to the proposed WQEA, preferably within the same drainage basin;
- Anticipated average annual water quality and quantity inflows to the proposed WQEA, based on published local data collected over a period of record that most closely matches the rainfall data;
- Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed treatment type and anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons; and
- Data from collection stations approved by the DEP in sites that the DEP deems sufficient to determine flows and local water quality conditions.

The bill provides that an issuance of a WQEA permit does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the WQEA.

The bill provides that an applicant for a WQEA permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the WQEA and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which the credits were awarded by the DEP.

The bill provides that if a permittee fails to comply with the conditions of a WQEA permit, the DEP must revoke the permittee's ability to sell enhancement credits until the WQEA is compliant with the permit conditions.

The bill directs the DEP or the water management districts to authorize the sale and use of credits to governmental entities to offset adverse water quality impacts of activities regulated under the bill or to assist entities seeking to meet an assigned BMAP allocation or RAP. The bill allows an applicant to use water quality improvement projects that use natural systems or land use modifications, including constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, to generate credits if approved by the DEP. The bill provides that a WQEA may not be located on lands purchased for conservation thorough the Florida Forever Act or Florida Preservation 2000 Act. The bill directs the DEP to provide for and maintain a ledger that tracks the award, release, and use of credits. In furtherance of the ledger requirement, the bill directs a WQEA operator to notify the DEP of the amount of credits sold or used within 30 days of the date the credits transaction is completed. It also directs a water management district that authorizes credit use to report to the DEP the amount of credits used by an applicant.

The bill provides that reductions in pollutant loading required under any state regulatory program are not eligible to be considered as credits. It specifies that credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an ERP for construction and operation of the surface water management system of the site. The bill provides that use of credits is voluntary, and any landowner, discharger, or other responsible person implementing applicable management strategies specified in a BMAP or RAP may not be required to use credits to reduce pollutant loads to achieve pollutant reductions. Further, the bill provides that a local government may not deny the use of credits due to the location of the WQEA outside the jurisdiction of the local government.

The bill provides that the authority granted to the DEP by this bill is supplemental to the authority granted under the statutes regulating water quality credit trading. It authorizes the DEP to adopt rules to implement WQEAs.

Section 2 amends s. 403.892, F.S., to add to a condition to qualify for graywater technology use incentives that each residence forming part of a multifamily project must be serviced by its own residential graywater system or a master graywater collection and re-use system for the entire project. The bill also clarifies that the maintenance of the graywater system is the responsibility of the owner. The bill provides that the graywater technology use incentives do not apply to multifamily projects that are more than five stories and clarifies that whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive incentives. The bill also corrects a reference.

Section 3 directs the DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures. The bill requires the DEP, in consultation with the water management districts, to include this required rulemaking in existing active rulemaking or to complete rule development by June 30, 2023.

Section 4 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

Indeterminate.

C. Government Sector Impact:

Local governments may experience a negative fiscal impact from loss of permit application fees for stormwater treatment due to the bill preventing local governments from requiring water quality treatment to be located within their jurisdiction.[73] Other fiscal effects are indeterminate.

The state government may experience revenue increases from WQEA permit application fees. These fees would be based on acreage and would likely range from $420 to $14,000. The number of applicants is unknown. The new permit application fees would be deposited into the Permit Fee Trust Fund.[74]

According to the Department of Environmental Protection (DEP), it would incur costs from operating the WQEA program, because it would need eight additional staff members and associated travel. The total financial impact for these positions including salaries, benefits, expenses, and travel costs would be approximately $878,275 annually.[75]

VI. Technical Deficiencies:

None.

[73] DEP, *House Bill 965 Legislative Analysis* (Jan. 7, 2022) (on file with the Senate Committee on Environment and Natural Resources).
[74] *Id.*
[75] *Id.*

VII. Related Issues:

The Department of Environmental Protection has identified numerous issues, as provided in its analysis.[76]

VIII. Statutes Affected:

This bill creates section 373.4134 of the Florida Statutes and substantially amends section403.892 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute:

- Removes definitions for "enhancement service area" and "planning unit" from the underlying bill.
- Adds definition for "natural system".
- Adds that the DEP must use standard numerical models that establish a WQEA's ability to remove pollutants in its determination of the award of credits. The models may be based on basin management action plan (BMAP) numerical models for the watershed where the WQEA is located, a similar numerical model if no BMAP exists for a particular watershed, or a standard numerical model if a similar model is not appropriate.
- Removes from the underlying bill the provision that an enhancement service area must be based on a BMAP, reasonable assurance plan, or planning unit.
- Requires a WQEA permit applicant to propose a performance and success criteria monitoring and verification plan.
- Requires the DEP to revoke a permittee's ability to sell enhancement credits if the permittee fails to comply with WQEA permit conditions until the WQEA is in compliance.
- Removes exceptions in the underlying bill that would allow a WQEA to provide credits outside of an enhancement service area.
- Adds that before approving the use of enhancement credits, the DEP or water management district must determine that the enhancement credits are appropriate for a specific permit use.
- Adds that WQEAs may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.
- Removes the section in the underlying bill authorizing the DEP to enter into agreements and contracts with public and private entities to accept and expand donations, grants of funds, and payments to expedite the evaluation of the entity's application for a dredge and fill permit or an environmental resource permit.

[76] *Id.*

- Deletes the $2.04 million appropriation for 24 full-time equivalent positions in the underlying bill.

CS by Environment and Natural Resources on February 1, 2022:
The committee substitute:

- Specifies that only governmental entities may purchase and use water quality enhancement (WQEA) credits.
- Defines "governmental entity" as any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.
- Removes the prohibition against water quality enhancement credits being used to compensate for wetland or other surface water impacts.
- Deletes the exception that allows water quality enhancement credit use outside of the enhancement service area for projects with total adverse impacts of less than one acre.
- Adds that DEP may enter into agreements and contracts with public or private entities to accept and expend donations, grants, and payments to expedite the evaluation of the entity's application for dredge and fill or environmental resource permits.
- Amends a condition to qualify for incentives for the use of graywater technologies to add that each residence that is part of a multifamily project will be serviced by either its own residential graywater system or a master graywater collection and reuse system for the entire project.
- Directs DEP to adopt and modify rules relating to mitigation banks and activities in surface waters and wetlands to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation measures.
- Appropriates $2.04 million in recurring funds, effective July 1, 2022, from the Grants and Donations Trust Fund to DEP and authorizes 24 full-time positions to evaluate dredge and fill and environmental resource permits for entities with which DEP has entered into agreements or contracts.

B. Amendments:

None.

442316

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 317

and insert:

by governmental entities to address impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas pursuant to this section will improve the certainty and long-term viability of water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to assist governmental entities in satisfying the net improvement performance standard pursuant to s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067 are considered an appropriate and permittable option.

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

(a) "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed.

(b) "Governmental entity" means any political subdivision of the state, including any state agency, department, agency of the state, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(c) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this section for the purpose of providing offsite, compensatory regional treatment for which enhancement credits may be provided.

(d) "Water quality enhancement area permit" means a permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of an enhancement area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) An environmental resource permit issued by the department under this section must authorize the construction, operation, management, and maintenance of a water quality enhancement area.

(b) Water quality enhancement credits may be sold only to governmental entities.

(c) A water quality enhancement area must address contributions of pollutants for those parameters in the watershed in which the water quality enhancement area is located which do not meet state water quality standards.

(d) A water quality enhancement area must use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to water quality in receiving waters and adjacent lands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will:

442316

1. Meet the requirements for issuance of an environmental resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality standards;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area which meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed.

(c) The department shall base its determination of the award of enhancement credits on standard numerical models that establish the water quality enhancement area's ability to remove pollutants.

1. Where a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models used for that basin management action plan in the water quality

enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as that where the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the department must use a standard numerical model for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model results, including the parameters used to establish the water quality enhancement area's efficacy. These parameters must include, but need not be limited to:

a. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record which most closely matches the rainfall data under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data collection stations approved in advance by the department at sites that the department deems sufficient to determine flows and local water quality conditions.

e. An attenuation factor applied to the water quality enhancement area to account for the water quality enhancement area's location within the watershed.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) MONITORING AND VERIFICATION.—

(a) An applicant for a water quality enhancement area permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the water quality enhancement area is operational. The protocols must be appropriate for the water quality enhancement area and sufficient to demonstrate that the area is meeting defined performance or success criteria for the reduction of pollutants or contaminants for which credits are awarded by the department.

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must

revoke the permittee's ability to sell enhancement credits until the water quality enhancement area is compliant with the permit conditions.

(6) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067.

(b) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department. Water quality enhancement areas may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(c) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

1. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days after the date the enhancement credit transaction is completed.

2. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to address water quality impacts must report to the department the amount of enhancement credits used by the applicants.

442316

(d) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(e) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(f) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(g) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(h) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(7) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(8) RULES.—The department may adopt rules to implement this section.

Section 2. Paragraph (b) of subsection (1) and paragraphs (a), (b), and (d) of subsection (3) of section 403.892, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(e)~~.

(3) To qualify for the incentives under subsection (2), the developer or homebuilder must certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

(6) This section does not apply to multifamily projects more than five stories in height. Whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive the incentives authorized pursuant to this section.

Section 3. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414, Florida Statutes, to ensure that required financial

442316

assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking or shall complete rule development by June 30, 2023.

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

And the title is amended as follows:

Delete lines 5 - 34

and insert:

enhancement areas; providing requirements for water quality enhancement areas and permits; requiring applicants to propose performance and success criteria monitoring and verification plans that meet certain requirements; providing requirements for enhancement credits; requiring the Department of Environmental Protection to revoke a permit under certain conditions; requiring the department and water management districts to authorize the sale and use of enhancement credits to governmental entities to address certain adverse water quality impacts and to meet certain water quality requirements; requiring the department to maintain enhancement credit ledgers; providing construction; authorizing the department to adopt rules; amending s. 403.892, F.S.; correcting a cross-reference; revising the conditions that a developer or homebuilder must certify it meets as part of its application for development approval or


442316

amendment of a development order; providing applicability; requiring the department to adopt and modify specified rules, as applicable; providing requirements for such rulemaking;

309240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Burgess) recommended the following:

Senate Substitute for Amendment (442316) (with title amendment)

Delete lines 52 - 317

and insert:

by governmental entities to address impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas pursuant to this section will improve the certainty and long-term viability of

309240

water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to assist governmental entities in satisfying the net improvement performance standard pursuant to s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067 are considered an appropriate and permittable option.

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

(a) "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed.

(b) "Governmental entity" means any political subdivision of the state, including any state agency, department, agency of the state, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(c) "Natural system" means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitats.

(d) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be provided pursuant to a water quality enhancement area permit issued under this section.

(e) "Water quality enhancement area permit" means an environmental resource permit issued for a water quality

309240

enhancement area which authorizes the construction, operation, management, and maintenance of an enhancement area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) The construction, operation, management, and maintenance of a water quality enhancement area must be approved through the environmental resource permitting process.

(b) Water quality enhancement credits may be sold only to governmental entities.

(c) A water quality enhancement area must be used to address contributions of one or more pollutants or other constituents in the watershed in which the water quality enhancement area is located which do not meet applicable state water quality criteria.

(d) A water quality enhancement area must be employed to use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, or maintain a water quality enhancement area or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(g) This section does not eliminate the obligation of an applicant for a water quality enhancement area permit or an applicant proposing to use enhancement credits to comply with all requirements of this part pertaining to adverse impacts to

309240

water quality in receiving waters and adjacent lands or wetlands.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will be used to:

1. Meet the requirements for issuance of an environmental resource permit;

2. Benefit water quality in the watershed in which the water quality enhancement area is located;

3. Meet defined performance or success criteria for the reduction of one or more pollutants or other constituents that prevent receiving waters from meeting applicable state water quality criteria;

4. Ensure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual operation and maintenance;

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area; and

6. Provide for permanent preservation of the water quality enhancement area which meets the requirements of s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed.

(c) The department shall base its determination of the

309240

award of enhancement credits on standard numerical models or analytical tools that establish the water quality enhancement area's ability to remove pollutants or constituents.

1. Where a basin management action plan exists for the watershed in which the water quality enhancement area is located, the applicant must use the same numerical models or analytical tools used for that basin management action plan in the water quality enhancement area permit application.

2. If a basin management action plan does not exist for the watershed in which the water quality enhancement area is located, the applicant, with the approval of the department, may submit as part of the water quality enhancement area permit application model parameters and results used in a numerical model or analytical tool used by the department to develop a basin management action plan for a watershed with similar physical characteristics and pollutants as that where the proposed water quality enhancement area is to be located.

3. If the department determines that its numerical model or analytical tool used for a basin management action plan is not appropriate for the proposed water quality enhancement area, the applicant must use a standard numerical model or analytical tool for the proposed water quality enhancement area.

4. To assist the department in evaluating and determining enhancement credits, a water quality enhancement area permit application must include the numerical model or analytical tool results used to establish the water quality enhancement area's efficacy. Supporting information must include, but need not be limited to:

a. Rainfall data over the longest period of record


309240

available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

b. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record which most closely matches the rainfall data under this paragraph.

c. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

d. Data provided pursuant to sub-subparagraphs a. and b. must be from monitoring stations the department deems sufficient to determine flows and local water quality conditions.

(d) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) MONITORING AND VERIFICATION.—

(a) An applicant for a water quality enhancement area permit must propose a performance and success criteria monitoring and verification plan, with protocols to be implemented once the water quality enhancement area is operational. The protocols must be appropriate for the water quality enhancement area and sufficient to demonstrate that the area is meeting defined performance or success criteria for the

309240

reduction of pollutants or contaminants for which credits are awarded by the department.

(b) If a permittee fails to comply with the conditions of a water quality enhancement area permit, the department must revoke the permittee's ability to sell enhancement credits until the water quality enhancement area is compliant with the permit conditions.

(6) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to address adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet required nonpoint source contribution reductions assigned in a basin management action plan or reasonable assurance plan pursuant to s. 403.067.

(b) Before approving the use of enhancement credits, the department or water management district must determine that the enhancement credits used by an applicant seeking a permit under this part are appropriate for a specific permit use.

(c) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department. Water quality enhancement areas may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(d) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

309240

1. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to address water quality impacts must report to the department the amount of enhancement credits used by the applicants.

2. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days after the date the enhancement credit transaction is completed.

(e) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(f) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(g) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(h) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(i) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(7) AUTHORITY.—The authority granted to the department


309240

under this section is supplemental to the authority granted under s. 403.067(8).

(8) RULES.—The department may adopt rules to implement this section.

Section 2. Paragraph (b) of subsection (1) and paragraphs (a), (b), and (d) of subsection (3) of section 403.892, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(c)~~.

(3) To qualify for the incentives under subsection (2), the developer or homebuilder must certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

309240

(6) This section does not apply to multifamily projects more than five stories in height. Whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive the incentives authorized pursuant to this section.

Section 3. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414, Florida Statutes, to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking or shall complete rule development by June 30, 2023.

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

And the title is amended as follows:

Delete lines 5 - 34

and insert:

enhancement areas; providing requirements for water quality enhancement areas and permits; requiring applicants to propose performance and success criteria monitoring and verification plans that meet certain requirements; providing requirements for enhancement credits; requiring the Department of Environmental Protection to revoke a permit under certain conditions; requiring the department and water management districts to authorize the sale and use of

309240

enhancement credits to governmental entities to address certain adverse water quality impacts and to meet certain water quality requirements; requiring the department to maintain enhancement credit ledgers; providing construction; authorizing the department to adopt rules; amending s. 403.892, F.S.; correcting a cross-reference; revising the conditions that a developer or homebuilder must certify it meets as part of its application for development approval or amendment of a development order; providing applicability; requiring the department to adopt and modify specified rules, as applicable; providing requirements for such rulemaking;

By the Committee on Environment and Natural Resources; and Senator Burgess

592-02535-22 20221426c1

A bill to be entitled

An act relating to environmental management; creating s. 373.4134, F.S.; providing legislative findings and intent; defining terms; providing for water quality enhancement areas, enhancement service areas, and enhancement credits; providing requirements for water quality enhancement area permits, enhancement service areas, and enhancement credits; directing the Department of Environmental Protection and water management districts to authorize the sale and use of enhancement credits to offset certain adverse water quality impacts and to meet certain water quality requirements; providing construction; requiring the department to maintain enhancement credit ledgers; authorizing the department to adopt rules; amending s. 403.061, F.S.; authorizing the department to enter into agreements and contracts with public and private entities for donations, funds, and payments to expedite the evaluation of environmental resource and dredge and fill permits; providing requirements for such agreements and contracts and permit evaluations; requiring the department to make such agreements and contracts publicly available on its website; amending s. 403.892, F.S.; correcting a cross-reference; revising the conditions that a developer or homebuilder must certify it meets as part of its application for development approval or amendment of a development order; providing applicability; requiring the department to adopt or modify specified rules, as

592-02535-22 20221426c1

applicable; providing requirements for such rulemaking; providing an appropriation and authorizing full-time equivalent positions; authorizing the department to increase the maximum rate of basic pay for certain positions by up to a specified percentage; providing an effective date.

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

Section 1. Section 373.4134, Florida Statutes, is created to read:

373.4134 Water quality enhancement areas.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that:

(a) Water quality will be improved and adverse water quality impacts of activities regulated under this part may be offset by the construction, operation, maintenance, and long-term management of water quality enhancement areas that provide offsite compensatory treatment.

(b) An expansion of existing authority for regional treatment to include offsite compensatory treatment in water quality enhancement areas to make credits available for purchase by governmental entities to offset impacts regulated under this part is needed.

(c) The construction, operation, maintenance, and long-term management of water quality enhancement areas pursuant to this section will improve the certainty and long-term viability of water quality treatment systems.

(d) Water quality enhancement areas are a valuable tool to

assist governmental entities in satisfying the net improvement performance standard pursuant to s. 373.414(1)(b)3. to ensure significant reductions of pollutant loadings.

(e) Water quality enhancement areas that provide water quality enhancement credits to governmental entities seeking permits under this part and to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067 are considered an appropriate and permittable option.

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

(a) "Enhancement credit" means a standard unit of measure which represents a quantity of pollutant removed.

(b) "Enhancement service area" means the geographic area where the water quality enhancement area can reasonably be expected to offset adverse water quality impacts.

(c) "Governmental entity" means any political subdivision of this state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(d) "Planning unit" means the total maximum daily load planning unit that is an individual tributary basin or a group of smaller adjacent tributary basins with similar characteristics.

(e) "Water quality enhancement area" means a natural system constructed, operated, managed, and maintained pursuant to a permit issued under this section for the purpose of providing offsite, compensatory, regional treatment within an identified enhancement service area, for which enhancement credits may be

provided.

(f) "Water quality enhancement area permit" means a permit issued for a water quality enhancement area which authorizes the construction, operation, management, and maintenance of the area and the purchase and sale of enhancement credits.

(3) WATER QUALITY ENHANCEMENT AREAS.—

(a) The construction, operation, management, and maintenance of a water quality enhancement area must be approved through the environmental resource permitting process. Department rules pertaining to environmental resource permits apply to water quality enhancement areas and enhancement credits.

(b) Water quality enhancement credits may be sold only to governmental entities.

(c) A water quality enhancement area must address contributions of pollutants for those parameters in an enhancement service area which do not meet state water quality standards.

(d) A water quality enhancement area must use, create, or improve natural systems in order to improve water quality.

(e) A governmental entity may use a water quality enhancement area for its own water quality needs. However, a governmental entity may not act as a sponsor to construct, operate, manage, maintain, or market enhancement credits to third parties.

(f) A local government may not require a permit or otherwise impose regulations governing the operation of a water quality enhancement area.

(4) WATER QUALITY ENHANCEMENT AREA PERMIT.—

(a) To obtain a water quality enhancement area permit, the applicant must provide reasonable assurances that the proposed water quality enhancement area will:

1. Meet the requirements for issuance of an environmental resource permit.

2. Benefit water quality in the enhancement service area.

3. Achieve defined performance or success criteria for the reduction of pollutants or other constituents that prevent receiving waters from meeting state water quality standards.

4. Assure long-term pollutant reduction through effective operation and maintenance in perpetuity by designation of a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance sufficient to assure perpetual maintenance.

5. Demonstrate sufficient legal or equitable interest in the property to ensure access and perpetual protection and management of the land within the water quality enhancement area.

6. Provide for permanent preservation of the site pursuant to s. 704.06.

(b) The water quality enhancement area permit must provide for the assessment, valuation, and award of credits based on units of pollutant removed. To assist the department in determining enhancement credits, a water quality enhancement area application must include the following information:

1. Rainfall data over the longest period of record available, collected from the closest site to the proposed water quality enhancement area, preferably within the same drainage basin.

2. Anticipated average annual water quality and quantity inflows to the proposed water quality enhancement area, based on published local data collected over a period of record that most closely matches the rainfall data under this paragraph.

3. Site-specific conditions affecting the anticipated performance of the proposed water quality enhancement area, including the proposed treatment type and anticipated associated reduction rates, as demonstrated by the performance of other areas where the treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

4. Data from collection stations approved in advance by the department in sites that the department deems sufficient to determine flows and local water quality conditions.

(c) The issuance of a water quality enhancement area permit under this section does not preclude the responsibility of an applicant to obtain other applicable federal, state, and local permits for the construction activities associated with the water quality enhancement area.

(5) ENHANCEMENT SERVICE AREA.—

(a) An enhancement service area must be based on a basin management action plan or reasonable assurance plan boundary adopted by the department. If the department does not adopt a basin management action plan or reasonable assurance plan boundary, the enhancement service area must be the planning unit.

(b) A water quality enhancement area may provide enhancement credits only in an enhancement service area, except for:

1. Projects with adverse impacts located partially within

the enhancement service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

(c) Once an enhancement service area has been established by the department, the enhancement service area must be accepted by all water management districts and local governments.

(6) ENHANCEMENT CREDITS.—

(a) The department or water management district shall authorize the sale and use of enhancement credits to governmental entities to offset adverse water quality impacts of activities regulated under this part or to assist governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan pursuant to s. 403.067.

(b) Water quality improvement projects using natural systems or land use modifications, including, but not limited to, constructed wetlands or minor impoundments that reduce pollutants to a receiving water body, may be used by an applicant to generate enhancement credits if approved by the department.

(c) The department shall provide for and maintain a ledger that tracks the award, release, and use of enhancement credits.

1. The operator of a water quality enhancement area shall notify the department of the amount of enhancement credits sold or used within 30 days of the date the enhancement credit transaction is completed.

2. A water management district that authorizes applicants seeking permits under this part to use enhancement credits to

offset water quality impacts must report to the department the amount of enhancement credits used by the applicant.

(d) Reductions in pollutant loading required under any state regulatory program are not eligible to be considered as enhancement credits.

(e) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of the surface water management system of the site.

(f) Use of enhancement credits made available by water quality enhancement areas is voluntary.

(g) Any landowner, discharger, or other responsible person regulated under this part or s. 403.067 implementing applicable management strategies specified in an adopted basin management action plan or reasonable assurance plan may not be required by any permit or other enforcement action to use enhancement credits to reduce pollutant loads to achieve the pollutant reductions established pursuant to s. 403.067.

(h) A local government may not deny the use of enhancement credits due to the location of the water quality enhancement area outside the jurisdiction of the local government.

(7) AUTHORITY.—The authority granted to the department under this section is supplemental to the authority granted under s. 403.067(8).

(8) RULES.—The department may adopt rules to implement this section.

Section 2. Subsection (22) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(22)(a) Advise, consult, cooperate, and enter into agreements and contracts with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department. However, the secretary of the department shall not enter into any interstate agreement relating to the transport of ozone precursor pollutants, nor modify its rules based upon a recommendation from the Ozone Transport Assessment Group or any other such organization that is not an official subdivision of the United States Environmental Protection Agency but which studies issues related to the transport of ozone precursor pollutants, without prior review and specific legislative approval.

(b) Enter into agreements and contracts with public or private entities to accept and expend donations, grants of funds, and payments to expedite the evaluation of the entity's application for a permit under s. 373.4131 or s. 373.4146. Such agreements and contracts must be effective for at least 3 years. Permit evaluations under this paragraph must follow the same permit application evaluation procedures as those for an entity that does not have an agreement or a contract with the department. The department shall ensure that agreements and contracts entered into under this paragraph do not substantively or procedurally affect the impartial evaluation of the entity's

permit application. Such active agreements and contracts must be posted on the department's website.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 3. Paragraph (b) of subsection (1) and paragraphs (a), (b), and (d) of subsection (3) of section 403.892, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

403.892 Incentives for the use of graywater technologies.—

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

(b) "Graywater" has the same meaning as in s. 381.0065(2)(f) ~~s. 381.0065(2)(c)~~.

(3) To qualify for the incentives under subsection (2), the developer or homebuilder must certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

(a) The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings. ~~This paragraph does not apply to multifamily projects over five stories in height.~~

(b) Each single-family residential home or residence will have its own residential graywater system ~~that is~~ dedicated for its use. Each residence forming part of a multifamily project will be serviced by either its own residential graywater system dedicated for its use or a master graywater collection and reuse

system for the entire project.

(d) The required maintenance of the graywater system will be the responsibility of the owner ~~residential homeowner~~.

(6) This section does not apply to multifamily projects more than five stories in height. Whether a dwelling is occupied by an owner is not an eligibility criterion for a developer or homebuilder to receive the incentives authorized pursuant to this section.

Section 4. The Department of Environmental Protection shall adopt and modify rules adopted pursuant to ss. 373.4136 and 373.414, Florida Statutes, to ensure that required financial assurances are equivalent and sufficient to provide for the long-term management of mitigation permitted under ss. 373.4136 and 373.414, Florida Statutes. The department, in consultation with the water management districts, shall include the rulemaking required by this section in existing active rulemaking or shall complete rule development by June 30, 2023.

Section 5. Effective July 1, 2022, the sum of $2.04 million in recurring funds from the Grants and Donations Trust Fund is appropriated to the Department of Environmental Protection, and 24 full-time equivalent positions are authorized, to evaluate applications for permits issued under ss. 373.4131 and 373.4146, Florida Statutes, for entities with which the department has entered into agreements or contracts under s. 403.061(22), Florida Statutes. To obtain and retain such positions, the department may increase the maximum rate of basic pay up to 30 percent for each position.

Section 6. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 7, 2022

I respectfully request that **Senate Bill #1426**, relating to Environmental Management, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Approps. Sub. Ag, Env. & GG
Committee

1426
Bill Number or Topic

Amendment Barcode (if applicable)

Name Frank Bernardino

Phone 561/718-2345

Address 201 West Park Ave Suite 100
Street

Email frank@canfieldflorida.com

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:
Polk 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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

1426
Bill Number or Topic

Approp Sub on Ag, Env and General Gov
Committee

Amendment Barcode (if applicable)

Name Robert Beltran

Phone 863 559-2471

Address 919 Summerfield Dr
Street

Email rbeltran@dewberry.com

LKLD FL 33803
City State Zip

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [✓] 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)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/2023
Meeting Date

Ag, Env't & Gen. Govt Approps
Committee

1426
Bill Number or Topic

Amendment Barcode (if applicable)

Name BETH ALVI

Phone

Address 308 N. Monroe
Street

Email

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:
AUDUBON FLORIDA

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/2022
Meeting Date

App. Sub. on Agriculture, Env't., & Gen. Gov't.
Committee

1426
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bradley Marshall, Earthjustice

Phone 850-681-0031

Address 111 S. Martin Luther King Jr. Blvd.
Street

Email bmarshall@earthjustice.org

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:
Earthjustice

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.

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.)

Prepared By:	The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government
BILL:	PCS/CS/SB 1728 (646840)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Property Insurance
DATE:	February 18, 2022
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1728 addresses contractor solicitations related to property insurance roof claims, the type of homeowners' insurance coverage insurers must offer for roof losses, and various aspects of Citizens Property Insurance Corporation (Citizens or corporation).

Property Insurance Claims for Roof Damage

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half as large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited

from making such solicitations so long as the solicitation includes the aforementioned disclosures.

The bill allows residential property insurers to offer only homeowners' insurance policies that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the Office of Insurance Regulation (OIR), but must also offer policies that provide replacement cost reimbursement.

Additionally, the bill allows an insurer to issue homeowners' policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof.

A homeowners' policy that utilizes a roof surface replacement schedule or provides roof coverage on a stated value basis must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

Citizens Property Insurance Corporation

The bill requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment. The bill requires that on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board. The bill revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:

- In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
- As an insurer regulator or as an executive or officer of an insurance trade association.

The bill also requires that the Citizens executive director must, at the time of appointment, have the experience, character and qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be

imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[1] Other properties would be charged the actuarially indicated rate.

The bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder's Citizens renewal premium.

The bill has an indeterminate fiscal impact to state revenues and expenditures. *See* **Section V. Fiscal Impact Statement**.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative one billion dollars.[2]

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with the OIR approving 55 of those filings. In 2016, the OIR approved only six rate increases of at least 10 percent.[3]

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.[4]

[1] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.
[2] David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf (last accessed Jan. 30, 2022).
[3] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[4] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

In 2020, the OIR conducted a data call of Florida's domestic property insurers.[5] According to the State Insurance Commissioner, the results of the data call showed the severity of non-weather water claims with litigation is nearly double that of the claims that are closed without litigation.[6]

According to the OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.[7] Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.[8] When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).[9] The bill addressed multiple aspects of the property insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens.

Property Insurance Practices by Contractors

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a $10,000 fine per violation. The law provides the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

---

[5] https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx (last visited Jan. 27, 2021).
[6] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).
[7] Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)
[8] International Risk Management Institute, *Glossary*, https://www.irmi.com/term/insurance-definitions/loss-development (last visited Jan. 27, 2021).
[9] Ch. 2021-77, Laws of Florida.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a $10,000 fine. Unlicensed persons not otherwise exempted from PA licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a $10,000 fine per act and the criminal penalty for unlicensed activity.

Regulations of Commercial Speech

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech[10] violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.[11] Justice Powell succinctly set forth the standards.

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.[12]

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

> If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

[10] Commercial speech is expression related solely to the economic interests of the speaker and its audience.
[11] 447 U.S. 557 (1980).
[12] See *Central Hudson Gas,*, 447 US. 557 at pg. 565.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.[13]

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

> Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.[14]

The United States Supreme Court (Court) used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S.* In delivering the opinion of the Court, Supreme Court Associate Justice Sonia Sotomayor upheld disclosure requirements placed by federal law[15] upon debt relief agents that provide bankruptcy assistance for payment because, "…the disclosures are intended to combat the problem of inherently misleading commercial advertisements… [and] … entail only an accurate statement of the advertiser's legal status and the character of the assistance provided."[16]

Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.[17] Within the law, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement;
- (3): A contractor who violates this section is subject to a disciplinary proceeding through Department of Business and Professional Regulation (DBPR) under s. 489.129, F.S., and is subject to a $10,000 fine for each violation; and
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to $10,000 for each violation.

[13] See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).
[14] *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).
[15] 11 U.S.C. s. 528 (2006).
[16] *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).
[17] *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the United States Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.[18] Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair that property.[19] Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.[20]

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.[21] Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it.
Florida law currently requires insurers writing homeowner's property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.[22] The OIR will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Fannie Mae and Freddie Mac Minimum Insurance Requirements

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary

[18] National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[19] See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co, v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))
[20] Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))
[21] National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Jan. 4, 2021).
[22] Section 627.7011(1), F.S.

mortgage market.[23] Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.[24]

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.[25] The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.[26] For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.[27]

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.[28] The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool the state has established to cover the limitation or exclusions.[29] For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- Eighty percent of the full replacement cost of the insurable improvements.[30]

---

[23] Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, https://www.fhfa.gov/about-fannie-mae-freddie-mac (last visited Jan. 28, 2022).
[24] Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).
[25] *See* Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), https://singlefamily.fanniemae.com/media/30286/display#page=905 (last visited Jan. 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.
[26] *Id.*
[27] *Id.*
[28] Freddie Mac, *Minimum Property Insurance Types and Amounts* (Nov. 4, 2020), https://guide.freddiemac.com/app/guide/section/4703.2 (last visited Jan. 28, 2022).

[29] *Id.*
[30] *Id.*

Roof Surface Payment Schedules

A roof surface payment schedule, sometimes referred to in residential property insurance policies as a roof surfacing loss percentage table, is a depreciation table that states upfront, in either the individual policy or endorsement, the cost the insurer will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material type over time.

Roof Surface Payment Schedule[31]								
The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system.								
	Roof Surface Material Type							
Age of Roof in Years	**Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural Composition Shingles**	**All Other Composition or Solar Shingles**	**Wood Shingles or Shakes**	**Metal Shingles or Panels**	**Concrete Tile, Fiber Cement Tile, or Clay Tile**	**Slate**	**Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface**	**All Other Roof Types**
0	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**
1	**97%**	**96%**	**97%**	**98%**	**98%**	**99%**	**95%**	**95%**
2	**94%**	**92%**	**94%**	**96%**	**96%**	**98%**	**90%**	**90%**
3	**91%**	**88%**	**91%**	**94%**	**94%**	**97%**	**85%**	**85%**
4	**88%**	**84%**	**88%**	**92%**	**92%**	**96%**	**80%**	**80%**
5	**85%**	**80%**	**85%**	**90%**	**90%**	**95%**	**75%**	**75%**
6	**82%**	**76%**	**82%**	**88%**	**88%**	**94%**	**70%**	**70%**
7	**79%**	**72%**	**79%**	**86%**	**86%**	**93%**	**65%**	**65%**
8	**76%**	**68%**	**76%**	**84%**	**84%**	**92%**	**60%**	**60%**
9	**73%**	**64%**	**73%**	**82%**	**82%**	**91%**	**55%**	**55%**
10	**70%**	**60%**	**70%**	**80%**	**80%**	**90%**	**50%**	**50%**
11	**67%**	**56%**	**67%**	**78%**	**78%**	**89%**	**45%**	**45%**
12	**64%**	**52%**	**64%**	**76%**	**76%**	**88%**	**40%**	**40%**
13	**61%**	**48%**	**61%**	**74%**	**74%**	**87%**	**35%**	**35%**
14	**58%**	**44%**	**58%**	**72%**	**72%**	**86%**	**30%**	**30%**
15	**55%**	**40%**	**55%**	**70%**	**70%**	**85%**	*****	*****
16	**52%**	**36%**	**52%**	**68%**	**68%**	**84%**		
17	**49%**	**32%**	**49%**	**66%**	**66%**	**83%**		
18	**46%**	**28%**	**46%**	**64%**	**64%**	**82%**		
19	**43%**	**	**43%**	**62%**	**62%**	**81%**		
20	**40%**		**40%**	**60%**	**60%**	**80%**		
21	**37%**		**37%**	**58%**	**58%**	**79%**		
22	**34%**		**34%**	**56%**	**56%**	**78%**		
23	**31%**		**31%**	**54%**	**54%**	**77%**		
24	**28%**		**28%**	**52%**	**52%**	**76%**		
25	*		*	**50%**	**50%**	**75%**		
26				**48%**	**48%**	**74%**		
27				**46%**	**46%**	**73%**		
28				**44%**	**44%**	**72%**		
29				**42%**	**42%**	**71%**		
30				***	***	****		

* 25 percent payable for 25 years or over; ** 25 percent payable for 19 years or over; *** 40 percent payable for 30 years or over; **** 70 percent payable for 30 years or over; ***** 25 percent payable for 15 years or over

[31] Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, http://doi.nv.gov/uploadedFiles/doinvgov/_public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf (last visited Jan. 28, 2022).

Valued Policy Law

Florida's Valued Policy Law (VPL)[32] has been in effect since 1899[33] and requires the insurer to set the value of the insured property in the event of a total loss.[34] The VPL originally applied to damages caused by fire and lightning; however, in 1982, the Legislature extended VPL to all covered perils under ch. 82-243, s. 539, L.O.F.[35] In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.[36] However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.[37]

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[38] Citizens is not a private insurance company.[39] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[40] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[41] Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

---

[32] Section 627.702, F.S.
[33] *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).
[34] *Id*.
[35] *Id*. The Legislature amended the VPL in 2005 after *Mierzwa v Florida Windstorm Underwriting Ass'n*, 877 So.2d 774 (Fla. 4th DCA 2004) was released, "expressly providing that "when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (a) does not apply. In such circumstances, the insurer's liability under this section shall be limited to the amount of the loss caused by the covered peril. See s. 627.702(1)(b), F.S. (2005)."
[36] Section 627.702(1)(a), F.S.
[37] Section 627.702(1)(b), F.S.
[38] Admitted market means insurance companies licensed to transact insurance in Florida.
[39] Section 627.351(6)(a)1., F.S.
[40] Section 627.351(6)(a)2., F.S.
[41] Section 627.351(6)(c)4.a., F.S.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[42]

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[43]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[44]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[45] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[46]

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of $232,502,323,529.[47] The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

[42] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 22, 2022).
[43] *Id.*
[44] *Id.*
[45] Section 10, ch. 2013-60, L.O.F.
[46] Section 627.3518(2)-(3), F.S.
[47] Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, https://www.citizensfla.com/-/20211231-policies-in-force (last visited Jan. 22, 2022).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248
	Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance[48]

These numbers do not reflect policies tagged for takeout via Citizens' depopulation program but still serviced by Citizens.[49] From December, 2020 to December, 2021, Citizens' policy count grew by nearly 40 percent, adding 216,566 total policies in force.[50] Citizens has expressed it expects to exceed one million policies in force in 2022.[51]

Citizens Glidepath Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [52]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.

[48] *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.
[49] *Id.*
[50] Citizens Property Insurance Corporation, *Policies in Force*, https://www.citizensfla.com/policies-in-force (last visited Jan. 22, 2022).
[51] Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), *available at* https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations.
[52] Section 627.351(6)(n)5., F.S.

- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[53] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[54]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[55] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[56] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[57] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[58] Citizens may impose three assessment tiers and their sequence is as follows:[59]

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[60]

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[61] This assessment is not levied against Citizens' policyholders.

---

[53] Section 627.351(6)(n)7., F.S.
[54] Section 627.351(6)(n)6., F.S.
[55] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 22, 2022).
[56] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 22, 2022).
[57] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[58] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[59] Citizens Property Insurance Corporation, *supra* note 56.
[60] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 56.
[61] Section 627.351.(6)(b)3.a., F.S.

Emergency Assessment – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[62]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.[63]

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more. [64] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.[65]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[66] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[67] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[68]

---

[62] Section 627.351(6)(b)3.d., F.S.
[63] *See* Citizens Property Insurance Corporation *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 22, 2022).
[64] Section 627.351(6)(c)5., F.S.
[65] Section 627.351(6)(c)5., F.S.
[66] Section 627.351(6)(a)3., F.S.
[67] Section 627.351(6)(a)3.d., F.S.
[68] Office of Insurance Regulation, Final Order Case No: 165625-14 (Dec. 22, 2014), a*vailable at* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf) (last visited Jan. 22, 2022). *See also*

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[69] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[70] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[71]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

III. Effect of Proposed Changes:

Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage

Section 1 amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the definition by providing a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits.

[69] Section 627.351(6)(q)3.a., F.S.

[70] Chapter 2016-229, L.O.F.

[71] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

Citizens Property Insurance Corporation

Section 2 amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation), the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

Eligibility for Citizens Coverage – Determining Replacement Cost

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the Office of Insurance Regulation (OIR), when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above $700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County, structures and single condominium units are ineligible for Citizens if the replacement cost is one million dollars or more.

The bill also deletes unnecessary language related to Citizens eligibility that ceased to be effective on January 1, 2017.

Eligibility for Citizens Coverage – Existing Citizens Policyholders

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium.

Furthermore, **Section 3** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors (board) at the time of appointment or reappointment. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one year of experience serving on the

board. The executive director of Citizens is required, at the time of appointment, to have must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the board appointed by each appointing officer[72] must have "demonstrated expertise in insurance." The bill specifies the demonstrated expertise in insurance must be at least 10 years' experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, an insurance regulator or as an executive director or officer of an insurance trade association.

The bill also specifies the executive director of Citizens must, at the time of appointment, have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements a person must meet to be the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of success operation; or
- A person the OIR has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:

- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for one year or more under the laws of any state or country.

[72] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

Under the bill, the executive director of Citizens would have be required to meet these requirements.

Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.[73] This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in **Section V, Fiscal Impact Statement** below.

Citizens Clearinghouse

Section 3 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

Reimbursement of Roof Losses – Actual Cash Value Reimbursement

Section 4 amends s. 627.7011(5), F.S., to allow residential property insurers to offer only homeowners' insurance policies (form HO-3) that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the OIR, but must also offer policies that provide replacement cost reimbursement.

The bill requires that a roof surface type reimbursement schedule used to calculate the actual cash value coverage that is provided for the roof must provide reimbursement for the repair, replacement, and installation of a roof based on the annual age of the roof surface type. The annual depreciation amounts must be actuarially justified, meet the requirements of s. 627.062, F.S., (which governs homeowners' insurance rate filings) and may not exceed four percent

[73] The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

unless actuarially justified. The roof surface type reimbursement schedule must be approved by the OIR.

Roof surface type reimbursement schedules must be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and must include the following notice at the top of the schedule in no smaller than 12-point uppercase and boldfaced type:

> PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

A homeowners' policy that utilizes a roof surface replacement schedule must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

The bill clarifies an insurer offering policies that provide roof coverage using a roof covering reimbursement schedule may also offer policies that provide roof reimbursement on the basis of replacement costs.

Reimbursement of Roof Losses – Stated Value Coverage

Additionally, the bill allows an insurer to issue homeowner's policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notwithstanding the stated value of coverage, the homeowners' policy must provide full replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

An insurer utilizing a stated value sublimit of coverage must include in the policy documents at issuance and at renewal, in bold type of at least 12 points, the following statement:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

The bill clarifies an insurer offering policies that provide roof reimbursement at a stated value sublimit of coverage may also offer policies that provide roof reimbursement on the basis of replacement costs.

Other Bill Sections

Sections 5, 6, and 7 of the bill reenact certain sections of the Florida Statutes to incorporate the amendments made by this bill.

Section 8 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:

Section 1 of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill, such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. Background on United States Supreme Court cases relevant to this topic is included on pages 4 through 6 of this Staff Analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 11 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.[74] Application of the glidepath limit resulted in Citizens proposing an average rate increase of 8.6 percent for 2022.[75] Under the bill, an additional rate increase averaging 26.3 percent would be imposed on a non-primary residences.

C. Government Sector Impact:

The provisions of the bill intended to depopulate Citizens – making current Citizens policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens renewal premium, and limiting application of the Citizens glidepath – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.351, 627.3518, and 627.7011.

---

[74] Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (Dec. 13, 2021). https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 29, 2022).

[75] See *id*.

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 February 16, 2022:
The committee substitute:

- Requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment.
- Requires on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board.
- Revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:
  - In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
  - As an insurer regulator or as an executive or officer of an insurance trade association.

CS by Banking and Insurance on February 2, 2022:
The committee substitute:

- Removes the provisions related to Surplus Lines and public records exemptions in s. 627.351, F.S, of the underlying bill; and
- Makes a technical change restoring current law related to Citizens' polices removed from the corporation through an assumption agreement.

B. Amendments:

None.

741042

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 381 - 409

and insert:

demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. The Chief Financial Officer shall designate one of the appointees as chair. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least 1 year

741042

of experience serving on the board of governors. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. The executive director must, at the time of the appointment, have the experience, character, and qualifications required under s. 624.404(3) to serve as the chief executive officer of an insurer. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board. As used in this sub-subparagraph, the term "demonstrated expertise in insurance" means at least 10 years' experience:

(I) In property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or

741042

(II) As an insurance regulator or as an executive or officer of an insurance trade association.

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

And the title is amended as follows:

Delete line 12

and insert:

board of governors for the corporation; defining the term "demonstrated expertise in insurance"; revising

By the Committee on Banking and Insurance; and Senator Boyd

597-02662-22 20221728c1

A bill to be entitled

An act relating to property insurance; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; amending s. 627.351, F.S.; deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; requiring the corporation to use a method for valuing dwelling replacement costs which is approved by the Office of Insurance Regulation; specifying qualifications requirements for certain members of the board of governors for the corporation; revising conditions for eligibility for coverage with the corporation; providing for a required limited annual rate increase for specified polices; defining the term "primary residence"; revising the contents of a specified notice provided by the corporation; amending s. 627.3518, F.S.; deleting an obsolete provision related to implementing the clearinghouse program by a specified date; deleting an obsolete reporting requirement; conforming provisions to changes made by the act; amending s. 627.7011, F.S.; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance policies by including roof surface type reimbursement schedules; providing requirements for roof surface type reimbursement schedules; authorizing the conversion of a residential property insurance policy

597-02662-22 20221728c1

to a roof surface type reimbursement schedule under certain circumstances; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing coverage on personal lines residential property insurance policies that limits roof coverage to a stated value sublimit of coverage; providing requirements for stated value sublimits of coverages; providing that certain provisions relating to homeowners' policies do not prohibit certain insurers from offering roof reimbursement on the basis of replacement costs; reenacting ss. 624.424(10), 627.3517, and 627.712(1), F.S., relating to annual insurer statements, consumer choice, and required residential windstorm coverage, respectively, to incorporate the amendments made to s. 627.351, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 489.147, Florida Statutes, is amended to read:

489.147 Prohibited property insurance practices.—

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

(a) "Prohibited advertisement" means any written or electronic communication by a contractor which ~~that~~ encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, if such communication does not state in a font size

of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

Section 2. Paragraphs (a), (c), (n), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that

property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting

Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures, and~~:~~

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the~~

~~dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. The corporation must use a method for valuing the dwelling replacement cost which is approved by the office ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~. ~~The requirements of sub-~~

~~subparagraphs b.-d. do not apply~~ However, in counties where the office determines there is not a reasonable degree of competition, ~~. In such counties~~ a ~~personal lines residential~~ structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that

is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy

forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in

which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage

levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that

there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of

local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President

of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance of at least 10 years' experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in this state, or an insurance trade association and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees with demonstrated expertise in insurance as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. The executive director must have the experience, character, and qualifications required under s. 624.404(3) to serve as the chief executive officer of an insurer. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive

director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and

matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for

coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the

corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the

renewal premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law

coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy ~~that is~~ offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray

deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its

approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar

year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but

is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering ~~that is~~ constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are

directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY

ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to

augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single personal lines residential policy issued by the corporation that covers an insured's primary residence, and any single commercial lines residential policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to

reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

8. As used in this paragraph, "primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out

request.

3. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which notice must inform that a take-out offer that is not more than 20 percent greater than the corporation's premium renders the risk ineligible for coverage from ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with~~ the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or

group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized

insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program.

Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at

or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold contained in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to

insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection

(5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business

operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 4. Paragraphs (f), (g), and (h) are added to

subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f)1. Prohibit an insurer, notwithstanding paragraph (1)(a), from providing limited coverage on a personal lines residential property insurance policy by including a roof surface type reimbursement schedule. If included in the policy, a roof surface type reimbursement schedule must do all of the following:

a. Provide reimbursement for repair, replacement, and installation based on the annual age of a roof surface type.

b. Provide full replacement coverage for:

(I) Any roof surface type less than 10 years old;

(II) A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

(III) A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

c. Use annual depreciation amounts that:

(I) Are actuarially justified and meet the requirements of s. 627.062; and

(II) Do not exceed 4 percent unless actuarially justified.

d. Be approved by the office.

e. Include at the top of the roof surface type schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING

TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

f. Be provided to the insured with the policy documents at issuance and renewal.

2. A residential property insurance policy may convert to a roof surface type reimbursement schedule at renewal if the roof is at least 10 years old and the policyholder:

a. Receives a Notice of Change in Policy Terms pursuant to s. 627.43141; and

b. Accepts the written notice of renewal premium required under s. 627.4133, by paying the premium.

(g) Prohibit an insurer, notwithstanding paragraph (1)(a), from providing coverage on a personal lines residential property insurance policy that limits coverage for a roof to a stated value sublimit of coverage. If included in a policy, a stated value sublimit of coverage must do all of the following:

1. Provide full replacement coverage for:

a. Any roof surface type less than 10 years old;

b. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril; and

c. A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

2. Include in the policy documents at issuance and at

renewal, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

(h) Prohibit an insurer that provides roof reimbursement on the basis of a roof surface type reimbursement schedule or that limits coverage for a roof to a stated value sublimit of coverage from also offering roof reimbursement on the basis of replacement costs.

Section 5. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including

premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 6. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, section 627.3517, Florida Statutes, is reenacted to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance

risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 7. For the purpose of incorporating the amendments made by this act to section 627.351, Florida Statutes, in a reference thereto, subsection (1) of section 627.712, Florida Statutes, is reenacted to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(1) An insurer issuing a residential property insurance policy must provide windstorm coverage. Except as provided in paragraph (2)(c), this section does not apply to risks that are

eligible for wind-only coverage from Citizens Property Insurance Corporation under s. 627.351(6), and risks that are not eligible for coverage from Citizens Property Insurance Corporation under s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the corporation under s. 627.351(6)(a)3. or 5. is exempt from this section only if the risk is located within the boundaries of the coastal account of the corporation.

Section 8. This act shall take effect July 1, 2022.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/22
Meeting Date

1728
Bill Number (if applicable)

Topic Property Insurance

Amendment Barcode (if applicable)

Name George Feijoo

Job Title Consultant

Address 108 S Monroe St.
Street

Phone 3057207099

Tallahassee FL 32301
City *State* *Zip*

Email grfeijoo@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

2/14/22
Meeting Date

S. Approps AE6
Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

Phone 509-8022

Address 1727 Highland Place
Street

Email greg@waypointstrat.com

Tall FL 32308
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:
R Street Institute

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

AG, ENVIRO & GEN GOV
Committee

SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St
Street

Tallahassee
City State Zip

Email

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:
FL Chamber of Commerce

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Sub Gen Gov App.
Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kevin Comerer (Co-Mer) Phone 813-830-2799

Address Street

Email Kcomerer@aifflorida.com

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: American Integrity Insurance

☐ 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.

S-001 (08/10/2021)

2/16/22
Meeting Date

The Florida Senate
APPEARANCE RECORD

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

1728
Bill Number or Topic

Ag & Gen Gov Approps
Committee

Amendment Barcode (if applicable)

Name Adam Basford

Phone 224-7173

Address 516 N Adams St
Street

Email abasford@gtf.com

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: Associated Industries of FL

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Appropriations Subcommittee on Agriculture, Environment, and General Government
Committee

1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name BG Murphy

Phone 850-893-4155

Address 3159 Shamrock South
Street

Email bmurphy@faia.com

Tallahassee FL 32309
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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-16-22
Meeting Date

1728
Bill Number or Topic

Approps Sub AG, GG + Envir.
Committee

Amendment Barcode (if applicable)

Name Christine Ashburn

Phone 850-513-3746

Address 2103 Maryland Circle
Street

Email Chinstine.ashburn@citizensfla.com

Tallahassee FL 32303
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:
Citizens Property Ins.

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/2022
Meeting Date

Approps Sub committee
As, Env, & ED
Committee

SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name PAUL HANDERHAN

Phone 561-704-0428

Address 120 S monroe street
Street

Email Paul@rambaconsulting.com

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:
FAIR

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

February 16, 2022
Meeting Date

Appprops Subcmte on Agriculture, Envi & Gen Govt
Committee

CS/SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tyler Chasez - Florida Justice Association

Phone 407-425-4640

Address 2876 Osceola Avenue
Street

Email tyler@hhjlegal.com

Orlando FL 32806
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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

February 16, 2022
Meeting Date

Appprops Subcmte on Agriculture, Envi & Gen Govt
Committee

CS/SB 1728
Bill Number or Topic

Amendment Barcode (if applicable)

Name Will Haselden

Phone 850-567-0020

Address 115 N. Calhoun Street
Street

Email will@haseldenlaw.net

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:

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.

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.)

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

BILL:	PCS/SB 1764 (576990)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; and Senator Albritton
SUBJECT:	Municipal Solid Waste-to-Energy Program
DATE:	February 18, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Favorable**
2.	Blizzard	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1764, creates section 377.814, Florida Statutes, to establish the Municipal Solid Waste-to-Energy Program, within the Department of Agriculture and Consumer Services (DACS), comprised of a financial assistance grant program and an incentive grant program.

The stated purpose of the program is to provide financial assistance grants and incentive grants to municipal solid waste-to-energy (MSWE) facilities in order to incentivize the production and sale of energy and reduce waste disposed of in landfills.

The bill appropriates $100 million in recurring funds from the General Revenue Fund to the DACS for the 2022-2023 fiscal year to fund the grant program. The bill appropriates $159,816 from the General Revenue Fund to the DACS to implement and administer the grant program. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Municipal Solid Waste-to-Energy

Energy recovery from waste is the conversion of non-recyclable waste materials into usable heat, electricity, or fuel through processes, including combustion, gasification, pyrolization, anaerobic digestion and landfill gas recovery.[1] This process is often called waste-to-energy (WTE).

Municipal solid waste (MSW), simply garbage or trash, can be used to produce energy at WTE plants and landfills.[2] WTE plants burn MSW to produce steam in a boiler and generate electricity.[3] MSW can contain:

- Biomass, or biogenic (plant or animal products) materials such as paper, cardboard, food waste, grass clippings, leaves, wood, and leather products;
- Nonbiomass combustible materials such as plastics and other synthetic materials made from petroleum; and
- Noncombustible materials such as glass and metals.[4]

In 2018, about 12 percent of the 292 million tons of MSW produced in the United States was burned in WTE plants.[5] The remaining MSW was managed as follows:

- 50 percent was landfilled;
- 23.6 percent was recycled;
- 8.5 percent was composted; and
- 6.1 percent is listed as "other."[6]

MSW is usually burned at WTE plants, using heat to make steam for generating electricity.[7] In 2020, 65 United States power plants generated around 13.5 billion kilowatt-hours of electricity from 25 million tons of MSW.[8]

In addition to producing electricity, WTE is a waste management option, reducing the amount of material otherwise buried in landfills by about 87 percent.[9] A WTE plant can reduce 2,000 pounds of MSW down to around 300 to 600 pounds of ash.[10]

Energy recovery from waste is important in the development of sustainable energy policies and is encouraged by the United States Environmental Protection Agency.[11] Recognized as a

---

[1] U.S. Environmental Protection Agency (EPA), *Energy Recovery from the Combustion of Municipal Solid Waste (MSW)*, https://www.epa.gov/smm/energy-recovery-combustion-municipal-solid-waste-msw (last visited Jan 24, 2022).
[2] U.S. Energy Information Administration (EIA), *Biomass explained, Waste-to-energy (Municipal Solid Waste), Basics*, https://www.eia.gov/energyexplained/biomass/waste-to-energy.php (last visited Jan. 24, 2022).
[3] U.S. EIA, *Biomass explained, Waste-to-energy (Municipal Solid Waste), In Depth, How waste-to-energy plants work*, https://www.eia.gov/energyexplained/biomass/waste-to-energy-in-depth.php (last visited Jan. 24, 2022).
[4] U.S. EIA, *supra* note 2.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] U.S. EPA, *supra* note 1.

renewable energy source, WTE facilities produce relatively clean, renewable energy through the combustion of municipal solid waste in specially designed power plants equipped with pollution control equipment to clean emissions.

Municipal Solid Waste-to-Energy in Florida

For over 30 years, WTE has been an integral component of Florida's solid waste management program.[12] In the 1993 revisions to the 1988 Solid Waste Management Act, the Legislature recognized the need to use an integrated approach to municipal solid waste management by using waste reduction, recycling, WTE facilities, and landfills.[13]

Section 403.7061, F.S., relating to the requirements for review of new WTE facility capacity by the Department of Environmental Protection (DEP), defines the term "waste-to-energy facility" as:

> [A] facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

Florida has the largest MSW burn capacity in the country.[14] The state went from having one small WTE plant in 1982 to having 12 operating facilities.[15] The following counties have at least one facility:

- Bay;
- Broward;
- Miami-Dade;
- Hillsborough;
- Lake;
- Palm Beach;
- Pasco; and
- Pinellas.[16]

[12] *See* s. 403.7061(1), F.S.
[13] *Id*.
[14] Florida Department of Environmental Protection (DEP), *Waste-to-Energy*, https://floridadep.gov/waste/permitting-compliance-assistance/content/waste-energy (last visited Jan. 24, 2022).
[15] *Id*.
[16] DEP, *Florida Waste-to-Energy Facilities*, https://floridadep.gov/sites/default/files/WTE_Contacts-2016.pdf (last visited Jan. 24, 2022).

These counties are among Florida's most populous, accounting for 48 percent of Florida's population.[17]

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[18] The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, reasonable, and reliable manner.[19] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.[20]

Public Utilities

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.[21] The term does not include municipal electric utilities and rural electric cooperatives.[22] Therefore, the PSC does not regulate the rates of publicly owned municipal or cooperative electric utilities.[23]

There are five investor-owned electric utility companies (IOU) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), Gulf Power Company (Gulf), and Florida Public Utilities Corporation.[24] IOU rates and revenues are regulated by the PSC.[25] These utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[26]

Public Utility Regulatory Policies Act

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),[27] which required promotion of energy efficiency and use of renewables. The PURPA requires utilities to purchase power, at the utility's full avoided cost, from "qualifying facilities," (QF) [28] which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.[29] The PURPA directed the Federal Energy Regulatory Commission to

---

[17] Florida Waste-to-Energy Coalition, *Fact Sheet*, (on file with the Senate Committee on Regulated Industries).
[18] Section 350.001, F.S.
[19] *See* Florida Public Service Commission (PSC), *The PSC's Role*, http://www.psc.state.fl.us (last visited Jan. 24, 2022).
[20] *Id*.
[21] Section 366.02(1), F.S.
[22] *Id*.
[23] *See* PSC, *Florida PSC 2020 Annual Report*, p. 13, http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Jan.24, 2022).
[24] *Id*. Florida Power & Light (FPL) acquired Gulf Power (Gulf) in 2019 and merged as of January 3, 2022.
[25] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Jan. 24, 2022).
[26] PSC, *supra* note 23, at p. 6.
[27] 16 U.S.C. s. 2601 et seq.
[28] Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Jan. 24, 2022).
[29] *Id*.

implement the provisions, which in turn directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S.,[30] directing utilities to purchase power from cogenerators or small power producers.[31]

Full Avoided Costs

A utility's full avoided cost is the incremental costs of electric energy or capacity, which, but for the purchase from cogenerators or small power producers, the utility would have to generate itself or purchase from another source.[32] Traditionally, the PSC has approved electric utility power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility's cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.[33]

Power Purchase Agreements

Standard Offer Contract

IOUs must annually establish and file with the PSC a standard offer contract[34] with terms, conditions, and payments based on projected costs for each fossil-fueled generating unit type identified in the IOU's 10-year site plan.[35] Payment terms and conditions for QFs are based on the projected cost to construct and operate the IOU's next planned generation unit.[36] Essentially, the next planned unit becomes an avoided unit and the basis for the avoided costs.

Negotiated Contracts

The standard offer contract provides a basis for developing negotiated contracts.[37]
Rule 25-17.240 of the Florida Administrative Code encourages IOUs and generating facilities to negotiate contracts for firm capacity and energy to provide fuel diversity, fuel price stability, and energy security.

The PSC addresses petitions by IOUs for approval of cost recovery of negotiated contracts between the IOU and the QFs.[38] The PSC's review considers various matters including whether

[30] Chapter 89-292, s. 4, Laws of Fla.
[31] Rule 25-17.082 of the Florida Administrative Code, is the PSC's rule on the utility's obligation to purchase.
[32] Section 366.051, F.S.
[33] PSC, *States' Electric Restructuring Activities Update: Wholesale Sales* http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Jan. 24, 2022).
[34] The following are the most recent PSC orders approving the standard offer contracts for the following investor owned electric utility companies (IOUs): FPL: http://www.floridapsc.com/library/filings/2021/07682-2021/07682-2021.pdf; Duke Energy Florida (Duke): http://www.floridapsc.com/library/filings/2021/08111-2021/08111-2021.pdf; Tampa Electric Company (TECO): http://www.floridapsc.com/library/filings/2021/08419-2021/08419-2021.pdf; and Gulf: http://www.floridapsc.com/library/filings/2021/07681-2021/07681-2021.pdf (last visited Jan. 24, 2022).
[35] Fla. Admin. Code R. 25-17.250. Each electric utility must submit a 10-year site plan to the PSC, estimating the utility's power generating needs and general locations for proposed power plant sites over a 10-year planning horizon. Section 186.801, F.S.; PSC, *Review of The 2021 Ten-Year Site Plan of Florida's Electric Utilities*, p. 9, http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2021/Review.pdf (last visited Jan. 24, 2022).
[36] *See* PSC, *2022 Legislative Bill Analysis for SB 1764*, p. 1 (Jan. 20, 2022) (on file with the Senate Committee on Regulated Industries).
[37] *Id*.
[38] *Id*.

the contract is at or below the IOU's avoided cost and will be considered prudent if it can be reasonably expected to defer or avoid an additional generation unit.[39]

As-available contract

"As-available" (AA) energy contracts are an option for QFs, including municipal solid waste-to-energy (MSWE) facilities.[40] These contracts are not subject to the PSC's approval but must be filed with the PSC within ten working days of being signed.[41] As-available energy is energy produced and sold on an hour-by-hour basis for which contractual commitments regarding the quantity and time of delivery are not required.[42] As-available energy is purchased at a rate equal to the utility's hourly incremental system fuel cost, which reflects the highest fuel cost of generation each hour.[43]

According to the PSC, the following four facilities receive as-available energy cost payments from FPL:

- Broward County Resource Recovery – South AA QF;
- Brevard County;
- Miami Dade Resource Recovery; and
- Lee County Solid Waste.

Firm Capacity Payments

If a QF can meet certain contractual provisions as to the quantity, time, and electricity delivery reliability, it is eligible for both capacity payments and energy payments under a firm contract.[44] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions.[45]

To promote alternative and renewable energy generation, the PSC requires IOUs to offer multiple capacity payment options, including early payments or levelized payments.[46] The different payment options allow QFs flexibility to best meet their financial needs.[47] If an early capacity payment option is selected, then the QF will begin receiving capacity payments earlier than the in-service date of the avoided unit and payments will generally be lower in the later years of the contract.[48]

According to the PSC, the following six facilities are operating under active firm contracts with their host IOU:

- Pinellas County Resource Recovery, with Duke, ending December 2024;

---

[39] Fla. Admin. Code R. 25-17.240; PSC, *supra* note 36, at p. 2.
[40] PSC, *supra* note 36, at p. 1.
[41] Fla. Admin. Code R. 25-17.0825(1)(b); PSC, *supra* note 36, at p. 2.
[42] Fla. Admin. Code R. 25-17.0825.
[43] Fla. Admin. Code R. 25-17.0825(2)(a); PSC, *supra* note 36, at p. 2.
[44] Fla. Admin. Code R. 25-17.0832(1); PSC, *supra* note 36, at p. 1.
[45] See U.S. EIA, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Jan. 24, 2022).
[46] PSC, *supra* note 36, at p. 1.
[47] *Id*.
[48] *See* Notice of Proposed Agency Action Order Approving Revised Standard Offer Contract, p. 2, http://www.floridapsc.com/library/filings/2021/07682-2021/07682-2021.pdf (last visited Jan. 24, 2022).

- Pasco County Resource Recovery, with Duke, ending December 2024;
- Broward County Resource Recovery – South QF, with FPL, ending December 2026;
- Palm Beach County Solid Waste Authority 1,with FPL, ending March 2034;
- Palm Beach County Solid Waste Authority 2, with FPL, ending March 2034; and
- Bay County/Engen LLC, with FPL/Gulf, ending July 2023.[49]

III. Effect of Proposed Changes:

The bill provides a preamble stating:

- It is in the public interest to promote the development of renewable energy resources in Florida, under s. 366.91, F.S.;
- Municipal solid waste-to-energy (MSWE) facilities using biomass as fuel or an energy source are deemed to be producing renewable energy, under s. 366.91, F.S.;
- MSWE facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent;
- The Legislature recognizes the benefits that MSWE facilities contribute to Florida and its local communities; and
- The Legislature intends to incentivize the production and sale of energy from MSWE facilities through grant programs.

Section 1 creates s. 377.814, F.S., establishing the MSWE Program, within the Department of Agriculture and Consumer Services (DACS), comprised of a financial assistance grant program and an incentive grant program.

The stated purpose of the program is to provide financial assistance grants and incentive grants to MSWE facilities in order to incentivize the production and sale of energy and reduce waste disposed of in landfills.

The bill defines the following terms as follows:

- "Department" to mean the DACS.
- "Municipal solid waste-to-energy facility" to mean publicly owned or government affiliate-owned facilities using an enclosed device with controlled combustion to thermally break down solid waste to an ash residue containing little or no combustible material, producing electricity, steam, or other energy. It does not include facilities primarily burning fuels other than solid waste; nor facilities primarily burning vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

The Financial Assistance Grant will provide qualifying MSWE facilities with annual financial assistance at a rate of two cents per kilowatt-hour of electricity purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the total capacity and energy payment the MSWE facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the total of the capacity and energy payment

[49] PSC, *supra* n. 36, p. 2.

the MSWE facility received under a new or amended power purchase agreement during the preceding state fiscal year. If funds are insufficient to cover every qualifying kilowatt-hour from all qualifying applicants, the DACS must prorate the available funds on an equitable basis, taking into consideration the commercial retail rate within the applicable service territory.

To qualify, the facility must have previously entered into a power purchase agreement with an electric utility before January 1, 2022, that included capacity and energy payments, and the owner of the facility has entered into a new or amended power purchase agreement that either no longer includes capacity payments or includes capacity and energy payments in an amount less than the total of the capacity and energy payments the MSWE facility received under the power purchase agreement entered into before January 1, 2022.

To apply for the grant, the facility owner must submit an application to the DACS, including the MSWE facility's name, the name of the utility purchasing the electric power from the facility, the total capacity and energy payment the facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the amount of energy delivered to and the total amount paid for such power by the utility pursuant to the new or amended power purchase agreement during the preceding state fiscal year.

The bill requires the DACS to establish a process in coordination with the Public Service Commission (PSC) to verify eligibility and the amount of energy purchased from the facility.

The incentive grant will provide facilities with matching funds on a dollar-for-dollar basis to assist with planning and design for constructing, upgrading, or expanding MSWE facilities, including necessary legal or administrative expenses.

To qualify, the facility owner must apply to the DACS and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061, F.S., which establishes the requirements for review of new waste-to-energy (WTE) facility capacity by the Department of Environmental Protection (DEP).

The bill requires the DEP to assist the DACS with determining eligibility and with establishing requirements to ensure long-term and efficient operation and maintenance of such facilities.

The DACS must perform adequate overview of applications and awards, including technical review, regular inspections, disbursement approvals, and auditing. If the DACS determines that program requirements are not being met, the bill requires termination or repayment of incentive grant funds.

The bill requires appropriated funds to be used first for financial assistance grants and then remaining funds may be used for incentive grants.

The bill requires the DACS to adopt rules to implement and administer the program. The rules must:

- Establish an application processes for both grant types;
- Include application deadlines; and
- Establish supporting documentation to be provided to the DACS.

Rules for the financial assistance grant program must be developed by the DACS in consultation with the PSC. Rules for the incentive grant program must be developed by the DACS in consultation with the DEP.

Section 2 appropriates $100 million in recurring funds from the General Revenue Fund to the DACS for the 2022-2023 fiscal year for the MSWE Grant Program. Funds appropriated for the MSWE Grant Program which are not disbursed by the end of the fiscal year in which the funds were appropriated, may be carried forward for up to five years.

Section 3 appropriates the sums of $149,832 in recurring funds and $9,984 in nonrecurring funds from the General Revenue Fund, and authorizes two full-time equivalent positions to the DACS to administer the MSWE grant program.

Section 4 provides that 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:

None.

B. Private Sector Impact:

The bill may result in a positive impact to private companies that own a government affiliated waste-to-energy facility and qualify for a grant.

C. Government Sector Impact:

The bill may result in a positive impact to county's which own a municipal solid waste-to-energy facility that qualify for funds under the grant program.

The bill appropriates $100 million in recurring general revenue to the Department of Agriculture and Consumer Services (DACS) to fund the Municipal Solid Waste-to-Energy Grant Program. Funds appropriated for the program which are not disbursed by the end of the fiscal year in which the funds were appropriated, may be carried forward for up to five years.

Per the DACS, two positions and expenses totaling $159,816 from the General Revenue Fund will be necessary to carry out the provisions of the bill.[50] The bill appropriates $149,832 in recurring funds and $9,984 in nonrecurring funds from the General Revenue Fund, and authorizes two full-time equivalent positions to the DACS to implement and administer the grant program.

The Public Service Commission (PSC) is required to assist the DACS to aid in the verification of grant eligibility and award amounts. The PSC anticipates any additional workload can be handled by existing staff.[51]

The bill requires the Department of Environmental Protection (DEP) to assist the DACS with determining eligibility and establishing requirements to ensure long-term and efficient operation and maintenance of the waste-to-energy facilities. The DEP has indicated this assistance can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 377.814 of the Florida Statutes.

[50] Department of Agriculture and Consumer Services, *Bill Analysis of SB 1764* (Jan. 24, 2022) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[51] PSC, *supra* note 36, at p. 4.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute:

- Clarifies grant eligibility and more accurately determines amounts eligible for distribution to qualifying applicants;
- Allows funds appropriated for the Municipal Solid Waste-to-Energy Program that are not disbursed by the end of the fiscal year in which they were appropriated, to be carried forward for up to five years; and
- Appropriates $159,816 from the General Revenue Fund, and authorizes two full-time equivalent positions to the Department of Agriculture and Consumer Services to administer the grant program.

B. Amendments:

None.

244354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 377.814, Florida Statutes, is created to read:

377.814 Municipal Solid Waste-to-Energy Program.—

(1) CREATION AND PURPOSE OF THE PROGRAM.—The Municipal Solid Waste-to-Energy Program is created within the department. The purpose of the program is to provide financial assistance

244354

grants and incentive grants to municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Municipal solid waste-to-energy facility" means a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

(3) FINANCIAL ASSISTANCE GRANT PROGRAM.—The department, subject to appropriation, shall provide annual financial assistance grants to municipal solid waste-to-energy facilities that entered into a power purchase agreement with an electric utility before January 1, 2022, which included capacity and energy payments, and the owner of the municipal solid waste-to-energy facility has entered into a new or amended power purchase agreement that either no longer includes capacity payments or

includes capacity and energy payments in an amount less than the total of the capacity and energy payments the municipal solid waste-to-energy facility received under the power purchase agreement entered into before January 1, 2022.

(a) To apply for an annual financial assistance grant, the owner of a municipal solid waste-to-energy facility must submit an application to the department. The application must include the name of the applicant's municipal solid waste-to-energy facility, the name of the utility purchasing the electric power from the municipal solid waste-to-energy facility, the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the amount of energy delivered to and the total amount paid for such power by an electric utility pursuant to a new or amended power purchase agreement during the preceding state fiscal year.

(b) The department shall distribute funds, subject to appropriation, to each qualifying applicant at a rate of 2 cents per kilowatt-hour of electric power purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the total of the capacity and energy payment the municipal solid waste-to-energy facility received under a new or amended power purchase agreement during the preceding state fiscal year. To the extent that funds are not available to provide financial assistance to each qualifying applicant for every qualifying kilowatt-hour purchased, the

244354

department shall prorate the funds on an equitable basis.

(c) The department shall establish a process to verify the amount of electric power purchased from a municipal solid waste-to-energy facility by an electric utility during each preceding state fiscal year. The Public Service Commission shall provide assistance to the department to help verify the information provided pursuant to paragraph (a).

(4) INCENTIVE GRANT PROGRAM.—The department, subject to appropriation, shall provide incentive grants to municipal solid waste-to-energy facilities to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses.

(a) To qualify for an incentive grant, the owner of a municipal solid waste-to-energy facility must apply to the department for funding; provide matching funds on a dollar-for-dollar basis; and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061.

(b) The Department of Environmental Protection shall provide assistance to the department in determining the eligibility of grant applications and establishing requirements to ensure the long-term and efficient operation and maintenance of facilities constructed or expanded under an incentive grant.

(c) The department shall perform adequate overview of each grant application and grant award, including technical review, regular inspections, disbursement approvals, and auditing, to implement this section.

(d) The department shall require the termination or

repayment of incentive grant funds if the department determines that program requirements are not being met.

(5) FUNDING.—Funds appropriated for the Municipal Solid Waste-to-Energy Program must first be used for financial assistance grants. Any funds remaining in a state fiscal year after disbursement to all qualifying applicants may be used to fund the incentive grant program.

(6) RULES.—The department shall adopt rules to implement and administer this section, including establishing grant application processes for financial assistance grants and incentive grants. The rules shall include application deadlines and establish the supporting documentation necessary to be provided to the department. In adopting rules relating to the financial assistance grant program, the department shall consult the Public Service Commission. In adopting rules for the incentive grant program, the department shall consult the Department of Environmental Protection.

Section 2. (1) For the 2022-2023 fiscal year, the sum of $100 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Municipal Solid Waste-to-Energy Program, as provided in s. 377.814, Florida Statutes.

(2) Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, funds allocated for the purpose of this section which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 5 years after the effective date of the original appropriation.

Section 3. For the 2022-2023 fiscal year, the sums of

244354

$149,832 in recurring funds and $9,984 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services, and two full-time equivalent positions with associated salary rate of 80,540 are authorized, for the purpose of implementing this act.

Section 4. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Municipal Solid Waste-to-Energy Program; creating s. 377.814, F.S.; creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; defining terms; requiring the department, subject to appropriation, to provide annual financial assistance grants to municipal solid waste-to-energy facilities that meet certain requirements; requiring the department to distribute funds to qualifying applicants based on certain criteria; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility; requiring the department, subject to appropriation, to provide incentive grants to municipal solid waste-to-energy facilities to assist with certain costs;

244354

specifying requirements for applying for the funding; requiring the Department of Environmental Protection to provide assistance in determining grant eligibility and establishing requirements; requiring the department to perform grant overview; establishing priority for funding for the grants; requiring the Department of Agriculture and Consumer Services to adopt rules; providing appropriations; authorizing the balance of certain unexpended funds to be carried forward for a specified number of years; authorizing positions; providing an effective date.

WHEREAS, as provided in s. 366.91(1), Florida Statutes, the Legislature has determined that it is in the public interest to promote the development of renewable energy resources in this state, and

WHEREAS, under s. 366.91, Florida Statutes, municipal solid waste-to-energy facilities that use biomass as a fuel or energy source are deemed to be producing renewable energy, and

WHEREAS, municipal solid waste-to-energy facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent, and

WHEREAS, the Legislature recognizes the benefits that municipal solid waste-to-energy facilities contribute to the state and its local communities, and

WHEREAS, the Legislature intends to incentivize the production and sale of energy from municipal solid waste-to-energy facilities through grant programs, NOW, THEREFORE,

By Senator Albritton

26-01462A-22 20221764__

A bill to be entitled

An act relating to the Municipal Solid Waste-to-Energy Program; creating s. 377.814, F.S.; creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; defining terms; requiring the department, subject to appropriation, to provide financial assistance grants to municipal solid waste-to-energy facilities that meet certain requirements; requiring the department to distribute funds to qualifying applicants based on certain criteria; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility; requiring the department, subject to appropriation, to provide incentive grants to municipal solid waste-to-energy facilities to assist with certain costs; specifying requirements for applying for the funding; requiring the Department of Environmental Protection to provide assistance in determining grant eligibility and establishing requirements; requiring the department to perform grant overview; establishing priority for funding for the grants; requiring the Department of Agriculture and Consumer Services to adopt rules; providing an appropriation; providing an effective date.

WHEREAS, as provided in s. 366.91(1), Florida Statutes, the

26-01462A-22 20221764__

Legislature has determined that it is in the public interest to promote the development of renewable energy resources in this state, and

WHEREAS, under s. 366.91, Florida Statutes, municipal solid waste-to-energy facilities that use biomass as a fuel or energy source are deemed to be producing renewable energy, and

WHEREAS, municipal solid waste-to-energy facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent, and

WHEREAS, the Legislature recognizes the benefits that municipal solid waste-to-energy facilities contribute to the state and its local communities, and

WHEREAS, the Legislature intends to incentivize the production and sale of energy from municipal solid waste-to-energy facilities through grant programs, NOW, THEREFORE,

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

Section 1. Section 377.814, Florida Statutes, is created to read:

377.814 Municipal Solid Waste-to-Energy Program.—

(1) CREATION AND PURPOSE OF THE PROGRAM.—The Municipal Solid Waste-to-Energy Program is created within the department. The purpose of the program is to provide financial assistance grants and incentive grants to municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Municipal solid waste-to-energy facility" means a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

(3) FINANCIAL ASSISTANCE GRANT PROGRAM.—The department, subject to appropriation, shall provide financial assistance grants to municipal solid waste-to-energy facilities that have entered into a power purchase agreement with an electric utility which includes capacity payments and the municipal solid waste-to-energy facility will no longer receive capacity payments under the agreement.

(a) To receive a financial assistance grant, the owner of a municipal solid waste-to-energy facility must submit an application to the department. The application must include the name of the applicant's municipal solid waste-to-energy facility and how much energy has been purchased from the facility by an electric utility during the preceding state fiscal year.

(b) The department shall distribute funds, subject to appropriation, to each qualifying applicant at a rate of 2 cents per kilowatt-hour of electric power purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the electric utility's avoided cost and the commercial retail rate. To the extent that funds are not available to provide financial assistance to each qualifying applicant for every qualifying kilowatt-hour purchased, the department shall prorate the funds on an equitable basis, taking into consideration the commercial retail rate within the applicable service territory.

(c) The department shall establish a process to verify the amount of electric power purchased from a municipal solid waste-to-energy facility by an electric utility during each preceding state fiscal year. The Public Service Commission shall provide assistance to the department to help verify grant eligibility and award amounts and to ensure that the sum, per kilowatt-hour, of the award plus the electric utility's purchase at the avoided cost, do not exceed the applicable commercial retail rate within the service territory.

(4) INCENTIVE GRANT PROGRAM.—The department, subject to appropriation, shall provide incentive grants to municipal solid waste-to-energy facilities to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses.

(a) To qualify for an incentive grant, the owner of a municipal solid waste-to-energy facility must apply to the department for funding; provide matching funds on a dollar-for-

dollar basis; and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061.

(b) The Department of Environmental Protection shall provide assistance to the department in determining the eligibility of grant applications and establishing requirements to ensure the long-term and efficient operation and maintenance of facilities constructed or expanded under an incentive grant.

(c) The department shall perform adequate overview of each grant application and grant award, including technical review, regular inspections, disbursement approvals, and auditing, to implement this section.

(d) The department shall require the termination or repayment of incentive grant funds if the department determines that program requirements are not being met.

(5) FUNDING.—Funds appropriated for the Municipal Solid Waste-to-Energy Program must first be used for financial assistance grants. Any funds remaining in a state fiscal year after disbursement to all qualifying applicants may be used to fund the incentive grant program.

(6) RULES.—The department shall adopt rules to implement and administer this section, including establishing grant application processes for financial assistance grants and incentive grants. The rules shall include application deadlines and establish the supporting documentation necessary to be provided to the department. In adopting rules relating to the financial assistance grant program, the department shall consult the Public Service Commission. In adopting rules for the incentive grant program, the department shall consult the

Department of Environmental Protection.

Section 2. For the 2022-2023 fiscal year, the sum of $100 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Municipal Solid Waste-to-Energy Program, as provided in s. 377.814, Florida Statutes.

Section 3. This act shall take effect July 1, 2022.

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

January 24, 2022

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: 1764 **Senate Bill Sponsor:** Sen. Albritton

Bill Title: Municipal Solid Waste-to-Energy Program

Effective Date: July 1, 2022

Similar Bill(s): Yes ☐ No ☒
Similar Bill(s):

Identical Bill: Yes ☒ No ☐
Identical Bill: 1419 by Mariano

1. SUMMARY

The bill establishes the Municipal Solid Waste-to-Energy Program within the Florida Department of Agriculture and Consumer Services (FDACS), composed of two grants to be made available to qualifying municipal solid waste-to-energy (WTE) facilities. The bill provides for funding of $100 Million, recurring, from General Revenue.

2. PRESENT SITUATION

Part III of Chapter 377, F.S., relates to renewable energy and green government programs, and includes the following statement of purpose:

> "This Act is intended to provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals. The grant programs in this act are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts."

Subsection 366.91(2), F.S., provides that "renewable energy" means electrical energy produced from specified sources, including biomass from municipal solid waste (MSW).

Subsection 403.703(36), F.S., defines "Solid waste disposal facility" as a "facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste."

Waste to Energy

WTE technology can be traced back to late 19th century furnace incinerators, called "destructors," developed primarily for public sanitation purposes by municipal engineers in the United Kingdom.[1] Waste incineration's continued industrial usage has helped achieve reduction of mass and volume of waste, the destruction of dangerous organic compounds and pathogens, and increasingly, as a method for generating utility-scale power production. Technological advancements to WTE facilities have been made over the past few decades, related to the equipment used for waste combustion on a moving grate, and improved methods of flue gas cleaning. It remains necessary, in the regular operation of a WTE facility, to add other fuels, such as natural gas, coal and wooden biomass to the waste in order to increase the heating value to the point of combustion.[2]

There are 77 WTE facilities in the United States, with eleven located in Florida. WTE presents the opportunity to turn MSW disposal problems into potentially valuable resources. However, assessing the economic viability of a project can be complicated by feedstock fluctuations and challenges related to:[3]

- diverse elemental composition requiring intermediate clean-up and separation steps;
- relatively low energy content;
- high moisture content; and
- distributed availability.

Palm Beach County Incinerator

In 2015, Palm Beach County built the nation's first MSW incinerator in 20 years, using advanced combustion and pollution control measures. With a total construction cost of $672,000,000, this WTE facility represents a very expensive investment relative to other power generation facility types, when positive externalities related to waste disposal are not factored.[4]

---

[1]Herbert, Lewis, "Centenary History of Waste and Waste Managers in London and South East England." Chartered Institution of Wastes Management (2007).

[2] Schneider, D.R., et. al., Cost Analysis of Waste-to-Energy Plant, Croatian Journal of Mechanical Engineering, Strojarstvo, 52 (3) 369-378 (2010).

[3] US Dep't of Energy, Waste-to-Energy from Municipal Solid Wastes (Aug. 2019), *available at* https://www.energy.gov/sites/prod/files/2019/08/f66/BETO--Waste-to-Energy-Report-August--2019.pdf

[4] *Id*. To generate nominal capacity of 100 megawatts (MW), this incinerator had capital costs of $6,720 per kilowatt (kW). Generation of 100 MW nominal capacity from a natural gas combustion turbine, is reported to have a capital cost of $1,101 per kW.

3. EFFECT OF PROPOSED CHANGES

Section 1 of the bill creates s. 377.814, F.S., establishing the Municipal Solid Waste-to-Energy Program within FDACS composed of two grants to be made available to qualifying municipal solid waste-to-energy facilities.

The bill creates subsection 377.814(1), F.S., to establish the program, and its purpose of creating an incentive for "the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill."

The bill creates subsection 377.814(2), F.S., to provide definitions of "Department" and "Municipal solid waste-to-energy facility."

Line 63 of the bill provides that the definition of "municipal solid waste-to energy facility" would include a "government affiliate-owned facility" in addition to publicly owned facilities. The term "government affiliate-owned facility" is not defined in the bill or existing law.

Lines 67- 69 of the bill excludes from the definition of "municipal solid waste-to energy facility," facilities that "primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement." Lines 70- 74 of the bill excludes from the definition of "municipal solid waste-to energy facility," facilities that "primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels." The terms "primarily" and "some" in this section relate to a threshold for exclusion from program qualification. This threshold would allow for facilities that may use fuel sources other than MSW, so long as these fuel sources are used in some portion less than "primarily."

The bill creates subsection 377.814(3), F.S., which establishes the financial assistance grant program, specifies application criteria, sets a rate by which funds can be distributed to qualifying applicants, provides for prorating of funds if funds are not fully available, and establishes a verification process in which Florida Public Service Commission would provide assistance to FDACS.

Lines 77-81 of the bill provide qualifying language related to the contractual relationship between municipal solid WTE facilities and electric utilities, such that they must "have entered into a power purchase agreement [PPA] with an electric utility which includes capacity payments and the municipal solid waste-to-energy facility will no longer receive capacity payments under the agreement."

Lines 88-93 of the bill provide a formula for the distribution of funds. Subject to appropriation, each qualifying applicant could receive funding up to an amount equivalent to "2 cents per kilowatt-hour of electric power purchased by an electric utility during the

preceding state fiscal year, not to exceed the difference between the electric utility's avoided cost and the commercial retail rate."

Lines 93-98 of the bill provide that, if funds are unavailable for every qualifying kilowatt-hour, funds shall be prorated "on an equitable basis, taking into consideration the commercial retail rate within the applicable service territory."

The bill creates subsection 377.814(4), F.S., which establishes the incentive grant program, establishes program requirements, establishes Florida Department of Environmental Protection's (FDEP) role in assisting in the determination of eligibility and certain program requirements, establishes FDACS' responsibility to perform adequate overview of each grant application and grant award, and provides for termination or repayment of incentive grant funds if FDACS determines program requirements are not being met.

Lines 110-113 of the bill provide for the use of incentive grants in order "to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses."

Lines 114-119 of the bill, relating to the program requirements, providing for a dollar-for-dollar match of funds, and demonstration that "the project is cost-effective, permittable, and implementable" and complies with FDEP's existing review process for WTE facilities.

The bill creates subsection 377.814(5), F.S., describing the priority of funding between the two grant programs.

The bill creates subsection 377.814(6), F.S., granting departmental rulemaking authority.

Section 2 provides for a $100 million appropriation of recurring funds from the General Revenue Fund to FDACS, for the 2022-2023 fiscal year.

Section 3 provides an effective date of July 1, 2022.

4. FISCAL IMPACT ON FDACS

	(FY 22-23) Amount/ FTE	(FY 23-24) Amount/ FTE	(FY24-25) Amount/ FTE
A. Revenues			
Recurring			
Non-Recurring			

TOTAL REVENUES			
B. Expenditures			
Recurring	$100,149,832	$100,149,832	$100,149,832
Non-Recurring	$9,984	$0	$0
TOTAL EXPENDITURES	$100,159,816	$100,149,832	$100,149,832
C. NET TOTAL	$100,159,816	$100,149,832	$100,149,832

COMMENTS: Recurring cost include the appropriated funds mentioned in the bill, 2 FTE & expense packages (Government Analyst I), plus travel to perform site visits to ensure adequate overview. Non-Recurring costs are related to rulemaking and the nonrecurring portion of the expense packages.

5. **IS THERE AN ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENT(s)?**
   WTE-generated electricity already helps offset municipal costs of waste disposal, and this legislation could provide further positive fiscal impacts for local governments. Additionally, supply diversification from WTE may offer improved grid resiliency against supply disruptions and price volatility.

6. **IS THERE AN ESTIMATED FISCAL IMPACT ON THE PRIVATE SECTOR?**
   To the extent the legislation leads to additional WTE generation, economic benefits are expected to include an increase in jobs, and profits for construction, manufacturing, and services companies that support or use renewable energy.

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)

   A. **Does the proposed bill create new or increase existing taxes, fees, or fines? If so, please explain.**
      No.
   B. **Does the proposed bill repeal or decrease existing taxes, fees, or fines? If so, please explain.**
      No.

   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:
         Subsection 6 of the bill requires FDACS to adopt rules to implement and administer the grant programs, specifically including the application process, application

deadlines, and necessary support documentation. The bill requires FDACS to consult with the FPSC and FDEP on the rulemaking adoption process.

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?**
    Unknown.

COMMENTS:

Date: January 19, 2022

Agency Affected:	Public Service Commission	Telephone: (850)413-6524
Program Manager:	Kaley Slattery	Telephone: (850)413-6125
Agency Contact:	Kaley Slattery	Telephone: (850)413-6125
Respondent:	Katherine Pennington	Telephone: (850)413-6596

RE: SB 1764

I. SUMMARY

SB 1764, filed by Senator Albritton, creates the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services (DACS). The program requires DACS, subject to appropriation, to provide financial assistance grants to Municipal Solid Waste-to-Energy facilities that meet certain requirements. The program also requires DACS to establish a process to verify the amount of certain electric power purchases. The Florida Public Service Commission (PSC or Commission) is to provide assistance to DACS to help verify grant eligibility and award amounts. The bill would take effect July 1, 2022.

II. PRESENT SITUATION

In 1978, the U.S. Congress enacted the Public Utility Regulatory Policies Act (PURPA). PURPA requires utilities to purchase electricity from cogeneration facilities and renewable energy power plants with a capacity no greater than 80 MW (collectively referred to as Qualifying Facilities or QFs). PURPA required the electric investor-owned utilities (IOUs) to buy electricity from QFs at the IOU's full avoided cost. These costs are defined in Section 366.051, Florida Statutes (F.S.), which provides in part that:

> A utility's "full avoided costs" are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.

If a QF can meet certain contractual provisions as to the quantity, time, and reliability of the delivery of electricity, it is eligible for capacity and energy payments under a firm contract. Rule 25-17.250, Florida Administrative Code (F.A.C.), requires each IOU to establish a standard offer contract with terms, conditions, and payments based on the projected cost of each fossil-fueled generating unit type identified in the utility's annual Ten-Year Site Plan[1] that is filed with the Commission. The projected costs to construct and operate the next planned unit becomes the basis for payment terms and conditions for new or renegotiated QF contracts. In this way, the next planned unit becomes the IOU's avoided unit and basis of avoided cost. The annual Ten-Year Site Plan process allows for recognition of technology, environmental, cost, and other changes over time that affect the timing of new generating capacity to maintain reliable service.

In order to promote alternative and renewable energy generation, the Commission requires the IOUs to offer multiple options for capacity payments, including the options to receive early (prior to the in-service date of the avoided-unit) or levelized payments. The different payment options allow QFs, such as municipal solid waste facilities, the ability to select the payment option that best fits its financing requirements. The standard offer contract provides a basis from which negotiated contracts can be developed, should they elect to enter into such a contract. The Commission addresses IOU petitions for

[1] http://www.floridapsc.com/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2021/Review.pdf

approval for cost recovery of negotiated contract agreements between the IOU and QFs. Commission review considers various matters including whether the contract is at or below the IOU's avoided cost.

A QF may sell energy to an IOU when the QF chooses to operate under an "as-available" energy contract. As-available energy is energy produced and sold on an hour-by-hour basis for which contractual commitments regarding the quantity and time of delivery are not required. As-available energy is purchased at a rate equal to the utility's hourly incremental system fuel cost, which reflects the highest fuel cost of generation each hour. As-available energy sales is an option that QFs, including municipal solid waste facilities may elect to pursue and these contracts are not brought to the Commission for approval.

Currently, six municipal solid waste facilities have payments based on firm contract terms and four receive payments based on the host IOU's as-available energy cost. The following table provides a listing of the municipal solid waste facilities providing renewable energy, contract expiration dates for those with firm contracts, and links to key Commission documents. Each IOU's payments for capacity and energy are reported to the Commission as part of the Commission's annual Fuel and purchased power cost recovery clause. An IOU may request that a given amount may be treated as confidential under Section 366.093(3), F.S.

IOU	Purchased From	Gross Capacity (MW)	MWH Purchased (2020)	End Date	Commission Document Nos.	
					Order	Contract
DEF	Pinellas County Resource Recovery	45	441,211	12/2024	05904-2010.pdf	11048-2009.pdf
					03829-2005.PDF	13227-2004.PDF
DEF	Pasco County Resource Recovery	26	192,363	12/2024	09080-1989.pdf	04233-1989.pdf
FPL	Broward County Resource Recovery - South QF	68	54,129	12/2026	02426-1992.pdf	12087-1991.pdf
FPL	Palm Beach County Solid Waste Authority 1	55	350,303	3/2034	04629-2011.pdf	00185-2011.pdf
FPL	Palm Beach County Solid Waste Authority 2	90	546,546	3/2034	04629-2011.pdf	00185-2011.pdf
FPL (Gulf)	Bay County/Engen, LLC	13	51,683	7/2023	09948-2017.pdf	06468-2017.pdf
FPL	Broward County Resource Recovery - South AA QF*	68	50,358	N/A	N/A	N/A
FPL	Brevard County*	6	45,763	N/A	N/A	N/A
FPL	Miami Dade Resource Recovery*	77	55,917	N/A	N/A	N/A
FPL	Lee County Solid Waste*	59	40,119	N/A	N/A	N/A

Notes: FPL: Florida Power & Light Company
DEF: Duke Energy Florida, LLC
Gulf: Gulf Power Company has been has been merged with FPL.
N/A: These four facilities receive only as-available energy payments.
MW: 1 Megawatt = 1,000 kilowatts (KW)
MWH: Megawatt hour
*: As-available energy contract

Each of the IOUs have various levels of retail rates offered to commercial customers pursuant to Commission approved tariffs. The amount of demand (kilowatt or KW) a commercial customer places on an IOU's system is an indicator of the size of the customer load and energy usage. This data is also an indicator of the level of costs that an IOU must recover from a commercial customer to address the IOU's expenses for the maintenance of a reasonable level of generation resources, transmission and distribution facilities, as well as ensuring an adequate supply of energy to address a commercial customer's needs. The following table[2] is indicative of the IOU's commercial retail rates and shows how the rates change for specific commercial customer demand and energy usage levels. Even though Gulf Power Company has been merged with Florida Power & Light Company (FPL) the retail rates for the Florida panhandle service area were not consolidated with the retail rates of FPL's peninsula service area until 2022.[3]

Investor-Owned Electric Utilities

Typical Electric Bill Comparisons * - Commercial / Industrial

December 31, 2020

Utility	KW Demand						
			75	150	500	1,000	2,000
	KWH						
	750	1,500	15,000	45,000	150,000	400,000	800,000
Florida Power & Light Company	$76	$142	$1,553	$3,766	$13,025	$30,077	$59,498
Duke Energy Florida, LLC	$106	$199	$1,847	$4,692	$15,606	$37,938	$75,862
Tampa Electric Company	$83	$148	$1,588	$3,816	$12,650	$29,740	$59,450
Gulf Power Company	$116	$207	$1,747	$4,618	$15,267	$36,172	$72,081
Florida Public Utilities Company							
Northwest	$108	$187	$1,611	$4,326	$14,501	$36,241	$72,323
Northeast	$108	$187	$1,611	$4,326	$14,501	$36,241	$72,323

* Excludes local taxes, franchise fees, and gross receipts taxes that are billed as a separate line item. Includes cost recovery clause factors effective December 2020.

[2] http://www.floridapsc.com/Files/PDF/Publications/Reports/General/Comparative/December%2031,%202020.pdf

[3] Order Nos. PSC-2021-0466-S-EI and PSC-2021-0466A-S-EI, Docket No. 20210015-EI, In re: Petition for rate increase by Florida Power & Light Company

III. EFFECT OF PROPOSED CHANGES

The bill would establish the Financial Assistance Grant Program within DACS to provide funding to municipal solid waste facilities. The bill requires the Commission to provide assistance to DACS to help verify grant eligibility for municipal solid waste-to-energy facility applications. The bill also requires the Commission to provide assistance to DACS by annually verifying award amounts and ensuring that the sum per kilowatt-hour of the award plus the electric utility's purchase at the avoided cost do not exceed the applicable commercial retail rate within the service territory.

The bill also requires DACS to use an IOU's commercial rate. As previously discussed, each IOU offers various commercial rates as represented by their tariffs. The use of different commercial rates would result in differences in grant funding. Additionally, the IOU's rates may collect applicable local taxes, franchise fees, and gross receipt taxes. The bill does not specify whether these additional charges are to be included in determining and verifying DACS's award amounts.

The bill takes effect July 1, 2022.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The only increased workload from this bill is its requirement that the Commission provide assistance to DACS to help verify grant eligibility and award amounts. The increased workload is expected to be handled by existing staff.

	(FY 22-23) Amount / FTE	(FY 23-24) Amount / FTE	(FY 24-25) Amount / FTE
A. Revenues			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

The annual DACS grants to a municipal solid waste facility owner/operator could make operation of the municipal solid waste facility owner/operator more profitable if the facility is owned and/or operated by a governmental entity.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

The annual DACS grants to a municipal solid waste facility owner/operator could make operation of the municipal solid waste facility owner/operator more profitable if the facility is owned and/or operated by a private entity.

VII. LEGAL ISSUES

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No.

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, and impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

No.

D. Other

None.

VIII. COMMENTS

Section (3) of bill is unclear as to the status of capacity payments pursuant to a purchased power agreement. If a municipal solid waste facility enters into a firm contract for capacity and energy, then the facility will receive capacity payments pursuant to the terms of the contract and for the duration of the contract. If the contract expires, the facility may choose to enter into an as-available contract with an IOU that does not include a capacity payment.

Section (3)(b) of the bill is unclear regarding the determination of a utility's avoided cost. While the IOU's payments to municipal solid waste facilities are reported to the Commission, the IOU's avoided costs are not revisited during the term of a contract after it has been approved.

Sections (3)(b) and (c) of the bill are unclear regarding the applicable commercial retail rate. There is more than one commercial retail rate approved for each IOU.

Prepared by: Alex Massiah and Matthew Jones

The Florida Senate

APPEARANCE RECORD

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

2/16/2022
Meeting Date

App. Sub. on Ag., Envt., and Cons. Nat.
Committee

1764
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bradley Marshall, Earthjustice

Phone 850-681-0031

Address 111 S. Martin Luther King Jr. Blvd.
Street

Email bmarshall@earthjustice.org

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:
Earthjustice

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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Appropriations on Agriculture
Committee

1764
Bill Number or Topic

Amendment Barcode (if applicable)

Name Harvey Soto

Phone 678-522-012

Address [redacted]
Street

Email hsoto@floridarising.org

Miami FL 33138
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 Rising

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.

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.)

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

BILL:	SB 1476
INTRODUCER:	Senator Wright
SUBJECT:	Prescription Drug Coverage
DATE:	February 15, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Sanders	Betta	AEG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 1476 revises provisions of the Florida Insurance Code (code) relating to the oversight of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR). Specifically, the bill:

- Authorizes the OIR to conduct market conduct examinations of PBMs to determine compliance with applicable provisions of the code;
- Requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions;
- Authorizes an audited pharmacy to appeal certain final audit findings made by health insurers or HMO, or PBM acting on their behalf; and
- Provides a person who fails to register with the OIR while operating as a PBM is subject to a $10,000 fine for each violation.

The bill has an indeterminate, yet negative impact to state revenue and expenditures. The OIR estimates contracting with a pharmacist to provide oversight of PBM market conduct examinations and respond to complaints involving pharmacy audits will cost $125,000 to $200,000 annually.

The Division of State Group Insurance program may experience an indeterminate, yet negative fiscal impact relating to administrative costs of any market conduct examination of its PBM by the OIR. To the extent such examination occurs, such costs are passed down to participants of the program.

The bill is effective July 1, 2022.

II. Present Situation:

National Health Care Expenditures in 2020[1]

Health care spending in the United States increased 9.7 percent to reach $4.1 trillion in 2020, a much faster rate than the 4.3 percent increase experienced in 2019. Gross Domestic Product declined 2.2 percent in 2020, leading to a sharp increase in the share of the overall economy related to health care spending—from 17.6 percent in 2019 to 19.7 percent in 2020. The acceleration in national health spending in 2020 was primarily due to a 36.0 percent increase in federal expenditures for health care that occurred largely in response to the COVID-19 pandemic.

In regards to retail prescription drugs, spending increased 3.0 percent to $348.4 billion in 2020, a slower rate than in 2019 when spending increased 4.3 percent. The slowdown was a result of a 4.2 percent decline in out-of-pocket expenditures, which resulted from slower overall utilization and an increased use of coupons, which lowers point-of-sale expenditures for consumers.

The Prescription Drug Supply Chain

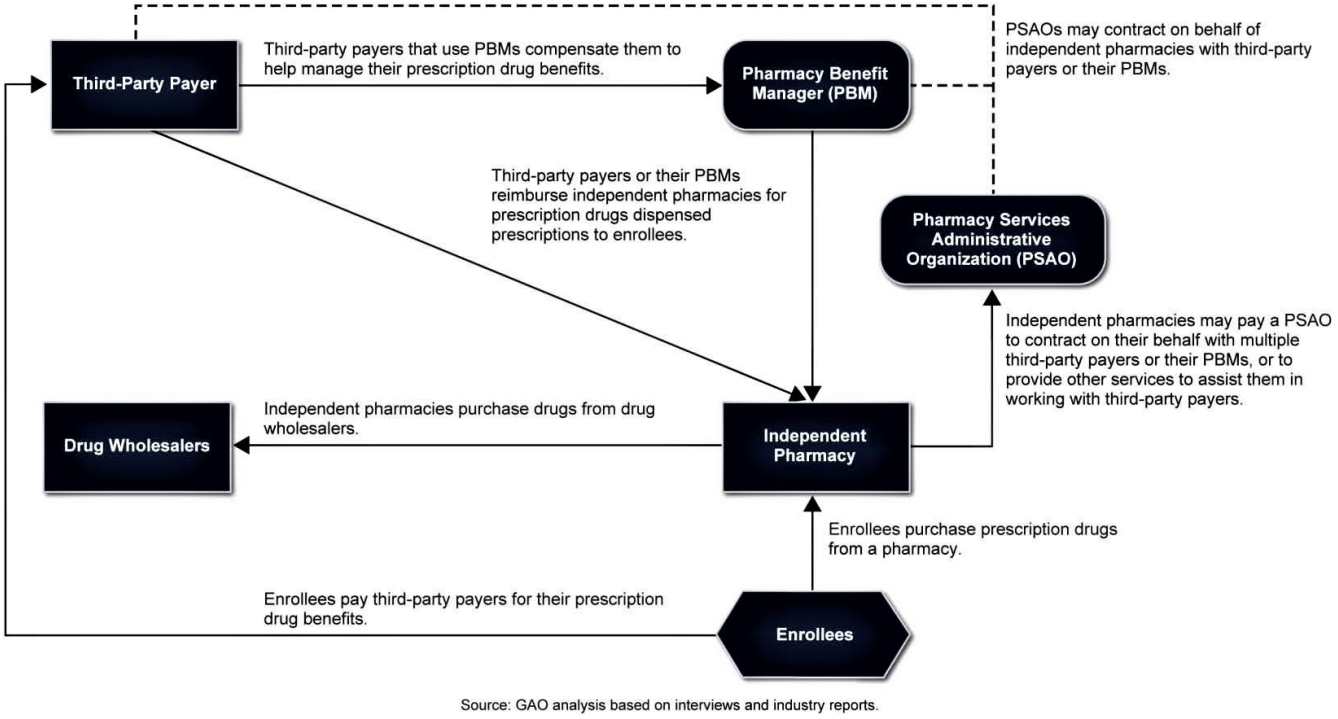
In recent years, the affordability of prescription drugs has gained attention, resulting in pharmacy benefit managers (PBMs) and drug manufacturers coming under scrutiny as policymakers have attempted to understand their role in the drug supply chain. Many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved with, and pay different prices for, prescription drugs as they move from the drug manufacturer to the insured.

Due to a lack of transparency in the marketplace, it can be difficult to determine the final price of a prescription drug. The final price of a drug may include rebates and discounts to insurers, health maintenance organizations (HMOs), or pharmacy benefit managers that are not disclosed.[2] Market participants, such as drug wholesalers, may add their own markups and fees, and drug manufacturers may offer direct consumer discounts, such as prescription drug coupons that can be redeemed when filling a particular prescription at a pharmacy.[3]

---

[1] Centers for Medicare and Medicaid Services, *National Health Expenditure 2020 Highlights*, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical (last visited Jan. 28, 2022).
[2] *Annu. Rev. Public Health. 1999. 20:361–401.*
[3] Reynolds, Ian, *et. al., The Prescription Drug Landscape, Explored (Mar. 2019).* The Pew Charitable Trusts.

Some independent pharmacies may contract with pharmacy services administrative organizations (PSAO) to interact on their behalf with other stakeholders, such as drug wholesalers and third-party payers, such as large private and public health plans and their PBMs.[4] The PSAOs develop networks of pharmacies by signing contractual agreements with each pharmacy that authorizes them to negotiate with third-party payers on the pharmacy's behalf. Drug wholesalers and independent pharmacy cooperatives owned the majority of PSAOs in operation in 2011 or 2012.[5] Health insurers, HMOs, or self-insured employers may contract with PBMs to manage their prescription drug benefits. The interaction among key entities involved in the distribution and payment of prescription drugs is depicted below:[6]



Source: GAO analysis based on interviews and industry reports.

A Study of 15 Large Employer Plans[7]

In response to concerns about rising drug costs, a recent study evaluated drug utilization from plan sponsors to estimate savings from reducing the use of high cost, low-value drugs and described some of the cost concerns and challenges relating to the drug supply chain, as follows:

> PBMs negotiate with pharmaceutical manufacturers for price discounts, which are typically paid as rebates based on sales volumes driven by formulary placement. Rebates can reduce the final net price to the plan sponsor and may be passed on to patients. However, in exchange for low

[4] General Accounting Office, *The Number, Role, and Ownership of Pharmacy Services Administrative Organizations* (GAO-13-176) (Feb 28, 2013), https://www.gao.gov/products/GAO-13-176 (last visited Jan. 28, 2022).
[5] *Id.*
[6] *Id.*
[7] Vela, Lauren, *Reducing Wasteful Spending in Employers' Pharmacy Benefit Plans* (Aug. 2019) the Commonwealth Fund, https://www.commonwealthfund.org/publications/issue-briefs/2019/aug/reducing-wasteful-spending-employers-pharmacy-benefit-plans (last viewed Jan. 28, 2022).

> administration fees, plan sponsors allow PBMs to keep a portion of the negotiated rebates and other fees. Contracts between PBMs and plan sponsors contain rebate guarantees, perpetuating the demand for high-rebate drugs by encouraging PBMs to maximize rebate revenue, giving preference to some drugs over others on formularies based on rebate revenue rather than their value and final cost to the patient or plan sponsor. Additionally, PBMs earn revenue from "spread" pricing, which is the difference between what PBMs pay pharmacies on behalf of plan sponsors and what PBMs are reimbursed by the plan sponsor. This also encourages PBMs to prioritize higher-cost drugs to allow for a larger spread.

The report further describes additional factors that may increase costs for employers and insureds:

> [P]lan sponsors often allow broad formularies that include wasteful drugs because they are concerned that employees will be disappointed if their prescribed drugs are not covered. Doctors prescribe these drugs because they are often unaware of drug costs. Pharmaceutical manufacturers contribute to these patterns by promoting their products through "detailers" — pharmaceutical salespeople calling on doctors — when less costly alternatives may be clinically appropriate for patients. Plan sponsors have addressed the resulting high spending by increasing patient cost-sharing on lower-value drugs. Manufacturers counteract cost-sharing and formulary management tools by flooding the market with copayment coupons that undermine the benefit structure put in place by plan sponsors.[8]

Pharmacy Benefit Managers

Many public and private employers and health plans contract with PBMs to help manage drug costs.[9] Some of the services provided by the PBMs include processing pharmacy claims; providing mail-order pharmacy services to their customers; negotiating rebates (discounts paid by a drug manufacturer to a PBM), developing pharmacy networks, creating drug formularies; reviewing drug utilization; and providing disease management.[10] Generally, a contract between a PBM and a health plan or an employer specifies the amount a plan or an employer will pay a PBM for brand name and generic drugs and specify certain savings guarantees.[11] A recent report found that PBMs passed through 78 percent of manufacturer rebates to health plans in 2012 and 91 percent in 2016.[12] For the same period, the report noted manufacturer rebates grew from $39.7 billion to $89.5 billion, and played a growing role in partially offsetting increases in list

[8] *Id.*
[9] Commonwealth Fund, *Pharmacy Benefit Managers and Their Role in Drug Spending* (Apr. 22. 2019), https://www.commonwealthfund.org/publications/explainer/2019/apr/pharmacy-benefit-managers-and-their-role-drug-spending (last visited Jan. 28, 2022).
[10] *Id.*
[11] *Policy Options To Help Self-Insured Employers Improve PBM Contracting Efficiency*, Health Affairs Blog, (May 29, 2019). DOI: 10.1377/hblog20190529.43197.
[12] *Supra* note 3.

prices, which the study noted have risen more quickly than overall retail prescription drug spending.[13]

In recent years, significant consolidations in the PBM industry have occurred. Further, many health insurers are acquiring PBMs. Many entities have cited reducing drug cost as a factor for many of the acquisitions.[14] In 2020, three PBMs, CVS Health (including Caremark and Aetna), the Express Scripts business of Cigna, and the OptumRx business of the Unitedhealth Group, were estimated to process about 77 percent of all equivalent prescription claims.[15] The remaining estimated 22 percent was processed by Humana Pharmacy Solutions (eight percent), Medimpact Healthcare Systems, (six percent), Prime Therapeutics (four percent), and all other PBMs and cash pay (four percent). In 2018, three PBMs processed about 76 percent of all equivalent prescription claims: CVS Health (including Caremark and Aetna), Express Scripts, and OptumRx (UnitedHealth). [16]

Reimbursement of Pharmacies by PBMs

Generally, the maximum allowable cost (MAC) price represents the upper limit price a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands).[17] A PBM can maintain multiple MAC lists, each tied to the requirements of a particular employee benefit plan or other payer.[18] A MAC pricing list is a cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profit margins, and other factors.[19] One of the goals of the MAC pricing list is to ensure the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price.[20] If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or, in some instances, may lose money on that specific purchase.[21]

Retail Pharmacies

Independent pharmacies are a type of retail pharmacy with a physical store location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. [22] Nationwide, the number of independent pharmacies in

[13] *Id.*
[14] Barlas, Stephen, Vertical Integration Heats Up in Drug Industry: Will Medication Price Hikes Cool Down as a Result? *P & T: a peer-reviewed journal for formulary management* vol. 43,1 (2018): 31-39.
[15]Drug Channels, Drug Channels: The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation (Apr. 6, 2021) (last visited Jan. 7, 2022).
[16] Drug Channels, CVS, Express Scripts, and the Evolution of the PBM Business Model (May 29, 2019) at https://www.drugchannels.net/2019/05/cvs-express-scripts-and-evolution-of.html (last visited Jan. 28, 2022).
[17] Academy of Managed Care Pharmacy, Maximum Allowable Cost (MAC) Pricing (Oct. 28, 2021), https://www.amcp.org/policy-advocacy/policy-advocacy-focus-areas/where-we-stand-position-statements/maximum-allowable-cost-mac-pricing (last visited Jan. 28, 2022).
[18] Hyman, David, *The Unintended Consequences of Restrictions on the Use of Maximum Allowable Cost Programs ("MACs") for Pharmacy Reimbursement* (Apr. 2015), at https://www.pcmanet.org/wp-content/uploads/2016/08/hyman-mac-white-paper-april-2015.pdf (last visited Jan. 29, 2022)
[19] *Id.*
[20] *Supra* note 17.
[21] *Id.*
[22] Arnold, Karen, *Independent Pharmacies: Not Dead Yet,* (Jan. 12, 2019, vol. 163, issue 1) Drug Topics, Voice of the Pharmacist, https://www.drugtopics.com/view/independent-pharmacies-not-dead-yet (last visited Jan. 28, 2022).

the United States continues to decline. In 2010, there were 23,106 independent pharmacies; by 2017, that number had dropped to 21,909.[23] As of June 2021, there were 19,397 independent pharmacies.[24]

The decision of employers, HMOs, or insurers to contract with PBMs may shift business away from smaller, local retail pharmacies that are also known as independent pharmacies. Historically, independent pharmacies were important health care providers in their communities and their pharmacists had long-term relationships with their patients.[25] However, many independent pharmacies have closed in recent years because of the competition resulting from the proliferation of large, chain retail pharmacies[26] that can negotiate with PBMs at deeply discounted reimbursement levels based on large volume sales.

Further, innovations and greater competition in the pharmacy marketplace are occurring. In 2018, Amazon acquired PillPack, a mail-order pharmacy, which has pharmacy licenses in all 50 states.[27] Further, many digital pharmacies are entering the marketplace and focus on certain strategies, such as:

- Home delivery of individual prescriptions;
- Operating at least one brick-and mortar retail location (so that the pharmacy can remain in a PBM's network);
- Dispensing 30-day prescriptions, not 90-day maintenance prescriptions;
- Offering a mobile application so consumers can manage their account, order prescription refills, and schedule delivery; and
- Providing telehealth consultations with prescribers.[28]

Federal Oversight of Health Insurance

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law.[29] Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting medical conditions and without basing premiums on any health-related factors. [30] The PPACA imposes many other requirements on qualified health plans offered by individual

[23] *Id.*
[24] Chain Drug Review, NCPA releases 2021 NCPA Digest Report (Oct. 11, 2021) NCPA releases 2021 NCPA Digest report - CDR – Chain Drug Review (last visited Jan. 28, 2022). The store count in previous years' Digest reports was based on an NCPA analysis of NCPDP data and NCPA research, which most recently produced a store count of 21,683 in 2019.
[25] Independent pharmacies are a type of retail pharmacy with a store-based location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. *See supra* note 4. (last visited Feb. 1, 2022).
[26] Such as Walmart, CVS, Walgreens, or Publix.
[27] Garcia, Ahiz, *Amazon rolls out "Amazon Pharmacy" branding to PillPack*, CNN Business (Nov. 15, 2019), *https://www.cnn.com/2019/11/15/tech/amazon-pharmacy-pillpack/index.html* (last visited Jan. 22, 2022).
[28] Drug Channels, *The Promise and Limits of Digital Pharmacies* (Feb. 16, 2021) at https://www.drugchannels.net/2021/02/the-promise-and-limits-of-digital.html (last visited Feb. 28, 2022).
[29] Pub. L. 111–148 was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The two laws are collectively referred to as the ''Patient Protection and Affordable Care Act.''
[30] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).

and group plans, including required benefits, reporting of medical loss ratios, and internal and external appeals of adverse benefit determinations.[31]

Medical Loss Ratios, Rebates, and Spread Pricing

If an insurer or HMO spends less than 80 percent in the individual or small group market (85 percent in the large group market) of premium dollar on medical care and efforts to improve the quality of care, the HMO or insurer must refund the portion of premium that exceeds this limit.[32] The 80 percent (or 85 percent) is the medical loss ratio[33] (MLR). The PBMs must report rebate information to the health insurers and HMOs, and the insurer or HMO includes this information as a deduction from the amount of incurred claims in the MLR reporting to the Department of Health and Human Services (HHS).[34]

Insurer Reporting of Health Plan Spending on Drugs

Beginning in 2021, federal law requires a group health plan or health insurance issuer offering group or individual health insurance coverage to report to the Secretary of the Department of Labor and the Secretary of the Department of Treasury the following information with respect to the health plan or coverage in the previous plan year:

- The 50 brand prescription drugs most frequently dispensed and the total number of paid claims for each drug;
- The 50 most costly prescription drugs by total annual spending;
- The 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year;
- Total spending on health care services by such plan or coverage, categorized by type of costs, including hospital, health care provider, clinical services, prescription drugs, and other medical costs;
- Spending on prescription drugs by the plan or coverage, and the enrollees;
- Average monthly premium paid by the employer and by participants and beneficiaries; and
- Impact of rebates, fees and other remuneration paid by drug manufacturers on premiums and out-of-pocket costs.[35]

Office of Insurance Regulation

The OIR is responsible for the regulation of insurers, HMOs, and other risk-bearing entities.[36] Prior to transacting insurance in Florida or operating a HMO, an insurer or HMO, respectively must meet certain requirements to obtain a certificate of authority from the OIR.[37]

---

[31] *Id*.
[32] 45 CFR 158.210 and 158.211.
[33] Medical loss ratio (MLR) is defined as: A basic financial measurement used in the Affordable Care Act to encourage healthplans to provide value to enrollees. If an insurer uses 80 cents out of every premium dollar to pay its customers' medical claims and activities that improve the quality of care, the company has a medical loss ratio of 80 percent. https://www.healthcare.gov/glossary/medical-loss-ratio-mlr/#:~:text=A%20basic%20financial%20measurement%20used,medical%20loss%20ratio%20of%2080%25. (last visited Feb. 10, 2022).
[34] 42 U.S.C. s. 2718.
[35] 42 USC s. 300gg-120.
[36] Section 20.121(3)(a)1., F.S.
[37] Sections 624.404 and 641.21, F.S.

Section 624.3161, F.S., authorizes the OIR to conduct market conduct examinations of insurers.[38] The entity subject to an examination is responsible for the payment of the examination costs, as provided in s. 624.320, F.S.

Oversight of PBMs

A PBM is a person or entity doing business in Florida, which contracts to administer prescription drug benefits on behalf of a health insurer or a HMO to insureds or subscribers of this state.[39] The PBMs are required to register with the Office of Insurance Regulation (OIR).[40] The registration process requires an applicant to remit a nonrefundable fee not to exceed $500, a copy of certain corporate documents, and a completed registration form. The current registration fee is five dollars.[41] Initial registration and registration certificate renewals are valid for two years and are nontransferable.[42] Currently, 66 pharmacy benefit managers have a letter of registration with the OIR.[43]

Mandatory Contractual Provisions. The Insurance Code[44] mandates contracts between health insurers or HMOs and PBMs contain certain provisions. However, there is no statutory penalty if the PBM does not comply with these contractual provisions. These mandatory contractual provisions require the PBM to:

- Update the maximum allowable cost (MAC) pricing information at least once every seven calendar days;
- Maintain a process that will eliminate drugs from the MAC lists or modify drug prices in a timely manner to remain consistent with changes in pricing data;
- Not limit a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244, F.S.; and
- Not require an insured to pay for a prescription drug at the point of sale in an amount that exceeds the lesser of:
  - The applicable cost sharing amount; or
  - The retail price of the drug in the absence of prescription drug coverage.

Maximum Allowable Cost. Current law defines the term, "maximum allowable cost" (MAC) as the per-unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.[45]

Payment of claims. Current law requires a PBM, acting on behalf of an insurer or HMO, to pay a provider's claim within a prescribed time.[46] Further, the Department of Financial Services

[38] Section 624.3161, F.S.
[39] Section 624.490, F.S.
[40] *Id.*
[41] Office of Insurance Regulation, Registration Form for Pharmacy Benefit Manager AllFormsPBM.pdf (floir.com) (last visited Jan. 27, 2022).
[42] Rules 69O-238.001 and 69O-238.002, F.A.C.
[43] OIR, Company Directory: Search Results available at https://www.floir.com/CompanySearch/ (last visited Jan. 28, 2022).
[44] Sections 627.64741, 627.6572, and 641.314, F.S.
[45] *Id.*
[46] Sections 627.6131 and 641.3155, F.S.

(DFS) reviews alleged violations, relating to claims of providers not paid or denied by the insurer or HMO.[47]

Florida Pharmacy Audits

Pursuant to ch. 465, F.S., the Florida Pharmacy Act, a "pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.[48] The term, "independent pharmacy," is not defined.

Pharmacies are subject to routine audits by an insurer, HMO, or a PBM acting on behalf of an insurer or HMO. Audits of pharmacies are conducted to determine compliance with respect to billing, reimbursement, and other contractual requirements.[49] Section 465.1885, F.S., prescribes the following rights of a pharmacy in connection with an audit conducted directly or indirectly by an insurance company, a managed care company, or a PBM:

- To be notified at least seven calendar days before the initial onsite audit;
- To have the onsite audit scheduled after the first three calendar days of a month unless the pharmacist consents otherwise;
- To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law;
- To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity;
- To receive the preliminary audit report within 120 days after the conclusion of the audit;
- To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy;
- To receive the final audit report within six months after receiving the preliminary audit report; and
- To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.[50]

However, neither the Department of Health nor the Board of Pharmacy has authority under ch. 465, F.S., the Florida Pharmacy Act, to enforce these provisions against any entity not complying with these requirements.

---

[47] Department of Financial Services, *Medical Providers, find out who to contact about your claim payment concerns* at https://apps.fldfs.com/eservice/MedicalProvider.aspx (last viewed Jan. 28, 2022).
[48] Section 465.003(11), F.S.
[49] JD Supra, *Pharmacy Compliance: Will Your Pharmacy's Policies and Protocols Withstand a DEA or PBM Audit?* (Aug. 3, 2020), at https://www.jdsupra.com/legalnews/pharmacy-compliance-will-your-pharmacy-78764/ (last visited Jan. 28, 2022).
[50] Section 465.188, F.S., prescribes the rights of a pharmacy in connection with a Medicaid audit.

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Agency for Health Care Administration (agency), administers the Statewide Provider and Health Plan Claim Dispute Resolution Program, which assists contracted and noncontracted providers and health plans to resolve claim disputes that are not resolved by the provider and the health plan.[51] The agency contracts with an independent dispute resolution organization to assist health care providers and health plans in order to resolve claim disputes. These services are available to Medicaid managed care providers and health plans. Claims submitted to managed care plans that have been denied in full or in part, or allegedly underpaid or overpaid, may be eligible for dispute under the arbitration process.[52]

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance (DSGI), administers the state group insurance program under a cafeteria plan consistent with s. 125, Internal Revenue Code to provide medical and prescription drug benefits for state employees and state university employees. To administer the program, the department contracts with third-party administrators for self-insured health plans, fully insured HMOs, and a pharmacy benefits manager (PBM) for the self-insured State Employees' Prescription Drug Program (program) pursuant to s. 110.12315, F.S. The current PBM for the state employees' prescription drug plan is CaremarkPCS Health, LLC (CVS Caremark).[53]

2020 U.S. Supreme Court Decision

In 2015, Arkansas enacted a law[54] that effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy's acquisition cost. To accomplish this result, the law requires PBMs to update their MAC lists in a timely manner when drug prices increase, and to provide pharmacies with an administrative appeal process to challenge MAC reimbursement rates that are below the pharmacies' acquisition costs.[55] If a pharmacy could not have acquired the drug at a lower price from its typical wholesaler, a PBM must increase its reimbursement rate to cover the pharmacy's acquisition cost.[56] A PBM must also allow pharmacies to "reverse and rebill" each reimbursement claim affected by the pharmacy's inability to procure the drug from its typical wholesaler at a price equal to or less than the MAC reimbursement price.[57] Lastly, the law allows a pharmacy to decline to sell a drug to a consumer if the relevant PBM will reimburse the pharmacy at less than its acquisition cost.[58]

[51] Section 408.7057, F.S.
[52] *Id.*
[53] Department of Management Services, Division of State Group Insurance, Contacts, available at Contact Information / Health | MyBenefits / Department of Management Services (myflorida.com) (last visited Jan. 27, 2022)
[54] AR SB 688, 2015 90th General Assembly (Apr. 2, 2015). Act 900, 2015 Session.
[55] Arkansas Code 17-92-507 (2019 Supp.)
[56] Section 17–92– 507(c)(4)(C)(i)(b) (Supp. 2019)
[57] Section 17–92–507(c)(4)(C)(iii) (Supp. 2019)
[58] Section 17–92–507(e) (Supp. 2019)

In late 2020, the U.S. Supreme Court decided that Arkansas' law regulating PBMs was not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA)[59] because the Arkansas law has neither an impermissible connection with nor reference to ERISA[60] and is therefore not preempted.[61]

III. Effect of Proposed Changes:

Section 1 amends s. 624.3161, F.S., to authorize the Office of Insurance Regulation (OIR) to conduct market conduct examinations of pharmacy benefits managers (PBMs). This section currently authorizes the OIR to examine insurers and other specified entities.

Section 2 amends s. 624.490, F.S., to provide a person who fails to register with the OIR while operating as pharmacy benefit manager is subject to a fine of $10,000 per violation.

Section 3 transfers s. 465.1885, F.S., renumbers the section as s. 624.491, F.S., and amends the section to clarify the existing rights of a pharmacy, relating to a pharmacy audit, are statutory requirements for an insurer or health maintenance organization (HMO), or any entity acting on behalf of the insurer or HMO, including but not limited to a PBM, conducting a pharmacy audit. The section specifies:

- Prior notice requirements for onsite audits;
- Audit date scheduling requirements;
- Use of a consulting pharmacist;
- Limitation on the duration of the audit period;
- Use of written and verifiable records of health care providers to validate pharmacy records;
- Retroactive reimbursement for claims denied for certain errors;
- Deadline for the provision of preliminary audits;
- Allowance for production of preliminary documentation to rebut an audit finding;
- Deadline for production of the final audit; and
- Methodology for calculating final recoupment and penalties.

The section authorizes a pharmacy to appeal final audit findings as to whether a claim payment is due and the amount of a claim payment is due with the Statewide Provider and Health Plan Claim Dispute Resolution Program at the Agency for Health Care Administration pursuant to s. 408.7057, F.S.

The section provides a health insurer or HMO that, under terms of a contract, transfers to a PBM the obligation to pay a pharmacy licensed under ch. 465, F.S., for any pharmacy claim arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

Section 4 provides that this bill takes effect July 1, 2022.

[59] 88 Stat. 829, as amended, 29 U. S. C. s. 1001 *et seq.*
[60] 29 USC s. 1144(a).
[61] *Rutledge vs. Pharmaceutical Care Management Association* (Dec. 10, 2020) No. 18-540.

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 bill clarifies statutory provisions relating to pharmacy audits to impose audit requirements rather than rights, which will provide greater transparency regarding the audit process. The bill provides pharmacies with a process to appeal pharmacy benefits manager (PBM) audit filings related to claim payments with the Statewide Provider and Health Plan Claim Dispute Resolution Program.

Since the bill authorizes the Office of Insurance Regulation (OIR) to conduct market conduct examinations of PBMs, the bill will increase the administrative costs of health insurers, health maintenance organizations (HMOs), and PBMs to the extent PBMs are examined. Entities examined by the OIR are responsible for the payment of the examination expenses.[62]

[62] Section 624.6131(4), F.S.

C. Government Sector Impact:

Office of Insurance Regulation[63]

The OIR estimates a recurring negative fiscal impact of $125,000 to $200,000 as the OIR will need to contract with a pharmacist in order to obtain pharmacy related training, provide oversight of PBM market conducted examinations, and respond to complaints involving pharmacy audits.

Department of Management Services/Division of State Group Insurance

The costs of a PBM market conduct examination conducted by the OIR could result in an indeterminate increase in administrative costs of the program's PBM. These costs could be recouped from individuals enrolled in the Division of State Group Insurance program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a pharmacy benefit manager (PBM), to comply with the pharmacy audit provisions. However, no penalty is authorized for noncompliance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161 and 624.490.

This bill transfers, renumbers, and amends section 465.1885 of the Florida Statutes to section 624.491 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.)

B. Amendments:

None.

[63] Office of Insurance Regulation, *2022 Legislative Session, Analysis SB 1476* (Jan. 10, 2022).

By Senator Wright

14-00145A-22 20221476__

A bill to be entitled

An act relating to prescription drug coverage; amending s. 624.3161, F.S.; authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; specifying that certain examination costs are payable by persons examined; amending s. 624.490, F.S.; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; transferring, renumbering, and amending s. 465.1885, F.S.; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; authorizing audited pharmacies to appeal certain findings; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 624.3161, Florida Statutes, are amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each pharmacy benefit manager as defined in s. 624.490; each licensed rating organization; ~~,~~ each advisory organization; ~~,~~ each group, association, carrier~~,~~ as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance; ~~,~~ and each authorized insurer

14-00145A-22 20221476__

transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

(3) The examination may be conducted by an independent professional examiner under contract to the office, in which case payment shall be made directly to the contracted examiner by the insurer or person examined in accordance with the rates and terms agreed to by the office and the examiner.

Section 2. Present subsection (6) of section 624.490, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

624.490 Registration of pharmacy benefit managers.—

(6) A person who fails to register with the office while operating as a pharmacy benefit manager is subject to a fine of $10,000 for each violation.

Section 3. Section 465.1885, Florida Statutes, is transferred, renumbered as section 624.491, Florida Statutes, and amended to read:

624.491 ~~465.1885~~ Pharmacy audits~~; rights~~.—

(1) A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health insurance policy or a health maintenance organization contract, respectively, must comply with the requirements of this section when the health insurer or health maintenance organization or any person or entity acting on behalf of the health insurer or health maintenance organization, including, but not limited to, a pharmacy benefit manager as

defined in s. 624.490, audits the records of a pharmacy licensed under chapter 465. The person or entity conducting such audit must ~~If an audit of the records of a pharmacy licensed under this chapter is conducted directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to as an "entity" in this section, the pharmacy has the following rights~~:

(a) Except as provided in subsection (3), notify the pharmacy ~~To be notified~~ at least 7 calendar days before the initial onsite audit for each audit cycle.

(b) Not schedule an ~~To have the~~ onsite audit during ~~scheduled after~~ the first 3 calendar days of a month unless the pharmacist consents otherwise.

(c) Limit the duration of ~~To have~~ the audit period ~~limited~~ to 24 months after the date a claim is submitted to or adjudicated by the entity.

(d) In the case of ~~To have~~ an audit that requires clinical or professional judgment, conduct the audit in consultation with, or allow the audit to be conducted by, ~~or in consultation with~~ a pharmacist.

(e) Allow the pharmacy to use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law.

(f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim that was retroactively denied for a clerical error,

typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity.

(g) Provide the pharmacy with a copy of ~~To receive~~ the preliminary audit report within 120 days after the conclusion of the audit.

(h) Allow the pharmacy to produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) Provide the pharmacy with a copy of ~~To receive~~ the final audit report within 6 months after the pharmacy's receipt of ~~receiving~~ the preliminary audit report.

(j) Calculate any ~~To have~~ recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.

(2) ~~The rights contained in~~ This section does ~~do~~ not apply to:

(a) Audits in which suspected fraudulent activity or other intentional or willful misrepresentation is evidenced by a physical review, review of claims data or statements, or other investigative methods;

(b) Audits of claims paid for by federally funded programs; or

(c) Concurrent reviews or desk audits that occur within 3 business days after ~~of~~ transmission of a claim and where no chargeback or recoupment is demanded.

(3) An entity that audits a pharmacy located within a Health Care Fraud Prevention and Enforcement Action Team (HEAT)

Task Force area designated by the United States Department of Health and Human Services and the United States Department of Justice may dispense with the notice requirements of paragraph (1)(a) if such pharmacy has been a member of a credentialed provider network for less than 12 months.

(4) Pursuant to s. 408.7057, and after receipt of the final audit report issued under paragraph (1)(i), a pharmacy may appeal the findings of the final audit report as to whether a claim payment is due and as to the amount of a claim payment.

(5) A health insurer or health maintenance organization that, under terms of a contract, transfers to a pharmacy benefit manager the obligation to pay a pharmacy licensed under chapter 465 for any pharmacy benefit claims arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

Section 4. 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: February 3, 2022

I respectfully request that **Senate Bill 1476**, relating to Prescription Drug Coverage, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Tom A. Wright
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

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

February 16, 2022
Meeting Date

Approp Sub on Agriculture, Environment & GG
Committee

SB1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Jackson

Phone (850) 222-2400

Address 610 North Adams Street
Street

Email jackson@pharmview.com

Tallahassee — *City* | Florida — *State* | 32301 — *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 Pharmacy Association

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/16/22
Meeting Date

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

1476
Bill Number or Topic

Approps Sub on Ag, Environment & General Gov't
Committee

Amendment Barcode (if applicable)

Name Kelly Mariette

Phone (850) 224-3427

Address 104 W Jefferson Street
Street

Email kelly@rlbodcpa.com

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:

Small Business Pharmacies Aligned for Reform

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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.16.22	1476 Prescription Drug Coverage
Meeting Date	Bill Number or Topic
Appropriations Subcommittee on Agriculture, Environment, and General Government	
Committee	Amendment Barcode (if applicable)

Name Larry Williams

Phone 850.510.5306

Address 215 S. Monroe Street, Suite 601
Street

Email LWilliams@gunster.com

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:
American Pharmacy Cooperative Inc.

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/14/22
Meeting Date

SB 1474
Bill Number or Topic

Sen Ag, Env, Gen Govt
Committee

Amendment Barcode (if applicable)

Name Claudia Davant

Phone 8505670979

Address
Street

Email

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. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

Approps Sub on Ag. Envir. & General Govt
Committee

1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Melody Arnold

Phone 386-547-1197

Address 113 E. College Ave
Street

Email melody@RSAconsulting llc.com

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: Florida Association of Community Health Centers

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/2022
Meeting Date

1476
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Lauren Whritenour

Phone 8505093610

Address 108 E Jefferson St Suite A
Street

Email lauren.claire.henderson@gmail.com

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:**

EPIC Pharmacy

☐ **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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2.16.2022
Meeting Date

Ag, Env & General
Committee

1476
Bill Number or Topic

n/c
Amendment Barcode (if applicable)

Name Joni Hunt

Phone 386.425.4233

Address Halifax Health, 303 N. Clyde Morris Blvd
Street

Email Joni.Hunt@Halifax.org

Daytona Beach FL 32114
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: Halifax Health

☐ 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.

S-001 (08/10/2021)

2/16/22
Meeting Date

Ag Appropriation
Committee

The Florida Senate
APPEARANCE RECORD

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

1476
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Nuland

Phone 904-233-3051

Address 4427 Herschel St
Street

Email nulandlaw@aol.com

Jacksonville, FL 32210
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 Chapter, American College of Physicians

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.

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.)

Prepared By:	The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government
BILL:	PCS/CS/SB 1952 (705416)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Governmental Oversight and Accountability Committee; and Senator Albritton
SUBJECT:	Evidence of Vendor Financial Stability
DATE:	February 18, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Davis	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1952 permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. The bill specifies three forms of evidence an agency must accept if it requires a vendor to show financial stability during the competitive solicitation process for the procurement of commodities and contractual services. Such evidence includes:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The bill defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

The bill is not expected to impact state or local government revenue or expenditures.

The bill takes effect July 1, 2022.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[1] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.[2]

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreements authorizing a state agency to make purchases under such contract.[3] The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S., as follows:

- Category One: $20,000;
- Category Two: $35,000;
- Category Three: $65,000;
- Category Four: $195,000; and
- Category Five: $325,000.

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users[4] to purchase commodities and contractual services from purchasing agreements and state term contracts[5] procured by the DMS.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term,

[1] Section 287.012(1), F.S., defines the term "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] *See* ss. 287.032 and 287.042, F.S.
[3] Section 287.042(16), F.S.
[4] Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.
[5] Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

or condition than that provided in the state term contract is available.[6] The use of a request for quote does not constitute a decision subject to protest.[7] Rule 60A-1.043, Florida Administrative Code, requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than Category One ($20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.[8]

Competitive Solicitation

With certain exceptions,[9] the procurement of commodities or contractual services in excess of Category Two, $35,000, requires agencies to use a competitive solicitation process.[10] Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.[11] Depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, agencies may use a variety of methods, including:

- Single source contracts,[12] used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid (ITB),[13] used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results. The agency specifically defines the scope of work for the contractual service and establishes precise specifications for the commodity or group of commodities;
- Requests for proposals (RFP),[14] which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),[15] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors. Agencies must specify the criteria in determining the acceptability and selection of the vendors in which the agency will invite to negotiate.

Chapter 287, F.S., grants an agency discretion in setting criteria for the award of a contract via competitive solicitation. For example, s. 287.057(1)(b)4., F.S., which governs the award of a contract via a RFP, provides that the "contract shall be awarded in writing to the *responsible*[16]

[6] Section 287.056(2), F.S.
[7] Section 287.056(2), F.S.
[8] Rule 60A-1.043, F.A.C.
[9] Section 287.057(3)(e), F.S.
[10] Section 287.057(1), F.S.
[11] *Id.*
[12] Section 287.057(3)(c), F.S.
[13] Section 287.057(1)(a), F.S.
[14] Section 287.057(1)(b), F.S.
[15] Section 287.057(1)(c), F.S.
[16] Section 287.012(25), F.S., defines "responsible vendor" to mean a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. This definition includes the financial capacity of the vendor.

and responsive[17] vendor whose proposal is determined … to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals." Similarly, for an ITN, s. 287.057(1)(c)4., F.S., provides that the "agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state." Additional criteria or information requested for determining whether such vendor is responsible include:

- References of the vendor;
- Documents evidencing a vendor's technical expertise; and
- A showing of financial capacity (also referred to as financial ability,[18] financial viability,[19] or financial stability[20]) by submitting financial data, including audited financial statements.

Contract Evaluations and Negotiations

For a contract in excess of $195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.[21] In addition, the agency head must appoint three people[22] to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.[23]

If the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator (FCCN)[24] in order to ensure that certified contract negotiators are knowledgeable about effective negotiation

[17] Section 287.012(27), F.S., defines "responsive vendor" to mean a vendor that has submitted a bid, proposal, or reply that conforms in all material respected to the solicitation.
[18] See, for example, *The Escambia County School District Request for Proposal #161301*, p. 18, file:///C:/Users/borja.gabriela/Downloads/Bid_161301.pdf.
[19] See, for example, *Department of Juvenile Justice Solicitation #10706 – Statewide Clinical Laboratory Testing Services*, p. 23, file:///C:/Users/borja.gabriela/Downloads/F1236158504_RFP_10706_SolicitationDocument.pdf.
[20] Rule 25-17.0832, F.A.C.
[21] Section 287.057(17)(a)1., F.S.
[22] Section 287.057(17)(b)2, F.S., provides that if the value of the contract is in excess of $1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of $10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.
[23] Section 287.057(17)(a)2., F.S.
[24] Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for FCCN Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.[25] If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.[26]

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.[27] Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.[28]

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of $35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.[29]

Chief Financial Officer and Department of Financial Services

The chief financial officer (CFO) of Florida is responsible for settling and approving accounts against the state and maintaining all state funds and securities.[30] The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.[31] The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.[32] In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.[33]

III. Effect of Proposed Changes:

Section 1 amends s. 287.057, F.S., to permit an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process. Any agency that requires a vendor

[25] Section 287.057(17)(b), F.S.
[26] *Id.*
[27] In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. *See* The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 7, 2022).
[28] *See* The Department of Management Services, *Vendor Resources*, available at https://vendor.myfloridamarketplace.com/vms-web/spring/login?execution=e1s1 (last visited, February 7, 2022).
[29] *Id.*
[30] Section 17.001, F.S.
[31] Section 17.03(1), F.S.
[32] Section 17.03(3), F.S.
[33] Section 17.03(4), F.S.

to show financial stability[34] during a competitive solicitation process must accept any of the following as evidence of financial stability:

- Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria;
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission; or
- For a vendor with annual revenues exceeding $10 million, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
- For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating such vendor's previous performance of substantially similar services.

The section defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

Section 2 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[34] This is not a defined term in ch. 287, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some vendors may experience an increase in costs associated with acquiring the required evidence to prove financial stability.

C. Government Sector Impact:

The bill is not expected to impact state or local government revenue or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute:

- Allows a vendor whose annual revenue is only $10 million, instead of $1 billion, to verify satisfaction of financial stability criteria with a letter issued by its chief financial officer or controller; and
- Allows a vendor that has provided substantially similar services to provide unaudited financial statements to demonstrate its previous performance of substantially similar services.

CS by Governmental Oversight and Accountability on January 26, 2022:
The CS does the following:

- Permits an agency to establish financial stability criteria when determining whether a vendor is responsible and to require a vendor to demonstrate its financial stability during the competitive solicitation process;
- Clarifies language regarding evidence of financial stability; and

- Defines the term "financial stability" to mean the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements, for the term of the contract.

B. Amendments:

None.

598822

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Albritton) recommended the following:

Senate Amendment

Delete lines 32 - 35
and insert:
3. For a vendor with annual revenues exceeding $10 million, a letter issued by the vendor's chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.
4. For a vendor that previously provided substantially similar services, unaudited financial statements demonstrating

598822

such vendor's previous performance of substantially similar services.

By the Committee on Governmental Oversight and Accountability; and Senator Albritton

585-02338-22 20221952c1

A bill to be entitled

An act relating to evidence of vendor financial stability; amending s. 287.057, F.S.; authorizing an agency, in making a certain determination, to establish financial stability criteria and require a demonstration of financial stability; providing that an agency that requires a vendor to demonstrate financial stability during a competitive solicitation process must accept certain evidence; defining the term "financial stability"; providing an effective date.

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

Section 1. Subsection (27) is added to section 287.057, Florida Statutes, to read:

287.057 Procurement of commodities or contractual services.—

(27)(a) In determining whether a vendor is a responsible vendor as defined in s. 287.012, an agency may establish financial stability criteria and require a vendor to demonstrate its financial stability. If an agency requires a vendor to demonstrate financial stability during the competitive solicitation process, the agency must accept any of the following as evidence of the vendor's financial stability:

1. Audited financial statements that demonstrate the vendor's satisfaction of financial stability criteria.

2. Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized

585-02338-22 20221952c1

statistical rating organization by the Securities and Exchange Commission.

3. For a vendor with annual revenues exceeding $1 billion, a letter issued by the chief financial officer or controller verifying such vendor's satisfaction of financial stability criteria.

(b) For purposes of this section, the term "financial stability" means the capacity to, at a minimum, efficiently allocate resources, assess and manage financial risks, and fully perform the contract requirements for the term of the contract.

Section 2. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

AEG Approps
Committee

1952
Bill Number or Topic

Amendment Barcode (if applicable)

Name Abby Vail

Phone 850-766-4417

Address 301 E. Park Ave, 5th floor
Street

Email abby@ballardpartners.com

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: KPMG

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-16-22
Meeting Date

Ag Approps Sub
Committee

SB 1952
Bill Number or Topic

598822
Amendment Barcode (if applicable)

Name Justin Thames

Phone 850-528-2209

Address 119 S. Monroe St., 121
Street

Email justin@ficpa.org

Tallahassee, FL 32303
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 Institute of CPAs

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-16-22
Meeting Date

Ag Approps Sub
Committee

SB 1952
Bill Number or Topic

Amendment Barcode (if applicable)

Name Justin Thames

Phone 528-2209

Address 119 S. Monroe St, Suite 121
Street

Email justin@ficpa.org

Tallahassee FL 32303
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 Institute of CPAs

☐ 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.

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.)

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

BILL:	PCS/SB 1832 (838940)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; and Senators Brodeur and Rouson
SUBJECT:	Food Recovery
DATE:	February 18, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	**Favorable**
2.	Blizzard	Betta	AEG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1832 directs the Department of Agriculture and Consumer Services (department) to implement a pilot program, subject to appropriation, to provide incentives to Florida agricultural companies to contribute high-quality fresh fruits and vegetables to food recovery entities in the state. The bill provides guidance on how entities shall negotiate the price of produce and how the department shall reimburse the entities.

The bill directs the department to submit a report on the pilot program, including recommendations for legislation, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2025. The bill grants the department rulemaking authority for the pilot program.

The bill creates a new pilot program that is contingent upon specific appropriation by the Legislature. The department may incur additional workload associated with the implementation of the provisions in the bill. The costs associated with this workload will need to be funded through the overall appropriation for the pilot program. This bill does not provide funding for the pilot program.

The bill takes effect July 1, 2022.

II. Present Situation:

Section 595.420, F.S., provides legislative intent and powers of the department regarding food recovery. The Legislature finds that millions of pounds of surplus and slightly blemished fruits and vegetables are destroyed each year, while many Floridians go without food.[1] The Legislature further finds that the state, through the Commissioner of Agriculture and Consumer Services, should assist food recovery programs, when needed, to aid in their establishment and to support their continued and efficient operation.[2] In helping to coordinate the establishment of food recovery programs, the department may: identify suppliers, volunteers, and nonprofit organizations in the community to ascertain the level of interest in establishing a food recovery program; provide facilities and other resources for initial organizational meetings; and provide direct and indirect support for the fledgling program, upon demonstration of serious interest at the local level.[3]

Approximately one-fifth of Floridians are food insecure, including over one million children. The department's Food Recovery Program works to recover food by working with farmers (volunteers visit the farms and collect surplus produce in a process called gleaning) and by working with schools (the department provides Florida schools with guidance on food waste audits, share tables, food donations, and composting).[4]

Food distribution programs are funded by the Legislature through the DACS Food Recovery Program. Partnerships for the 2021-2022 fiscal year include:

- Feeding Florida's Farmers Feeding Florida Program, which purchases cosmetically blemished produce from local agricultural producers and provides it to households in need through Feeding Florida's member food banks.
- The Farm Share Program, which provides food free of charge to local community partner agencies as well as directly to families, children, senior citizens, and individuals in need to address food insecurity throughout the state.
- Feeding South Florida's Senior Grocery Delivery Program, which provides a grocery delivery service for low-income, homebound seniors in Palm Beach, Miami-Dade, and Broward Counties.
- Second Harvest of the Big Bend's Feeding Rural Florida Program, which purchases and distributes fresh, nutritious food to rural North Florida counties.[5]

III. Effect of Proposed Changes:

The bill creates s. 595.420(8), F.S., and defines the terms "agricultural company" and "food recovery entity." The department is directed to implement a pilot program to provide incentives to Florida agricultural companies to contribute high-quality fresh fruits and vegetables to food recovery entities in Florida, subject to appropriation. The goal of the program is to reach annual

[1] Section 595.420(1)(a), F.S.
[2] Section 595.420(1)(c), F.S.
[3] Section 595.420(3), F.S.
[4] Florida Department of Agriculture and Consumer Services Food Recovery Program *see* https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Food-Recovery-Program (last visited Jan. 18, 2022).
[5] *Id.*

contributions of 50 million pounds of high-quality fresh fruits and vegetables from Florida growers to food recovery entities by July 1, 2025.

To encourage agricultural companies to contribute high-quality fruits and vegetables, the bill allows food recovery entities to negotiate the price per pound for produce and reimburse agricultural companies on a dollar-for-dollar basis for costs relating to picking, packing, precooling, and transporting high-quality fresh fruits and vegetables from the farm to the entity. Such produce must meet the United States Department of Agriculture grade 1 or 2 standards and must be shipped within seven days of the harvest date. The shipping date may be modified based on the expected shelf life of the particular fruit or vegetable, as long as the modified date will not affect the grade 1 or 2 standards. The harvest date must be included on the invoice provided by the agricultural company to the food recovery entity.

The bill directs the department to reimburse entities on a dollar-for-dollar basis for the purchase of high-quality fresh fruits and vegetables from agricultural companies plus a ten cents per pound distribution reimbursement. To receive reimbursement an entity must submit an invoice as prescribed by the department, which includes, at a minimum, the following information:

- Ship date;
- Ship location by city;
- Harvest date;
- Packaging type and size;
- Delivery location by city;
- Delivery date;
- Received weight in total pounds for each crop;
- Total price per pound for each crop;
- Total invoice price paid; and
- Total pounds delivered.

The bill directs the department to submit a report on the pilot program, including recommendations for legislation, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2025. The bill grants the department rulemaking authority for the pilot program.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Agricultural companies may benefit from having an additional market for their produce and Floridians may benefit from the increased availability of fresh produce from food recovery entities.

C. Government Sector Impact:

If the Legislature provides funding for the pilot program, the department may incur costs relating to workload, depending on the amount of the annual appropriation and number of food recovery entities associated with the pilot program. Costs associated with this workload will need to be funded through the overall appropriation for the pilot program. This bill does not include funding for the program. Temporary staff may be needed in the future to manage the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 595.420 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 16, 2022:
The committee substitute removes the appropriation of $5 million to the department to implement the pilot program.

B. Amendments:

None.

888136

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Brodeur) recommended the following:

Senate Amendment

Delete line 80

and insert:

million in nonrecurring funds is appropriated from the General Revenue Fund to the Department

547636

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Brodeur) recommended the following:

Senate Substitute for Amendment (888136) (with title amendment)

Delete lines 79 - 82.

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

And the title is amended as follows:

Delete line 17

and insert:

effective date.

By Senator Brodeur

9-01413A-22 20221832__

A bill to be entitled

An act relating to food recovery; amending s. 595.420, F.S.; defining terms; directing the Department of Agriculture and Consumer Services, subject to appropriation, to implement a pilot program to provide incentives to Florida growers to contribute high-quality fresh fruits and vegetables to food recovery entities in the state; authorizing food recovery entities to negotiate the purchase price of produce and reimburse agricultural companies for certain costs; providing produce shipping requirements; requiring the department to reimburse food recovery entities for certain costs; providing reimbursement invoice requirements; requiring the department to submit a report to the Governor and Legislature by a specified date and to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Subsection (8) is added to section 595.420, Florida Statutes, to read:

595.420 Food recovery; legislative intent; department functions.—

(8)(a) As used in this subsection, the term:

1. "Agricultural company" means a fruit or vegetable producer in the state that has an affiliated shipper and is licensed under the United States Perishable Agricultural Commodities Act.

9-01413A-22 20221832__

2. "Food recovery entity" means a nonprofit association engaged in food recovery and distribution with at least 20 years of operation in the state that has received a minimum of 10 million pounds of perishable produce annually for the last 3 years.

(b) Subject to appropriation, the department shall implement a pilot program to provide incentives to Florida agricultural companies to contribute high-quality fresh fruits and vegetables to food recovery entities in the state. The goal of the pilot program is to reach annual contributions of 50 million pounds of high-quality fresh fruits and vegetables from Florida growers to food recovery entities by July 1, 2025.

(c) To encourage agricultural companies to contribute high-quality fresh fruits and vegetables, a food recovery entity may negotiate the price per pound for produce and reimburse agricultural companies on a dollar-for-dollar basis for costs relating to picking, packing, precooling, and transporting high-quality fresh fruits and vegetables from the farm to the food recovery entity. Such produce must meet the Unites States Department of Agriculture grade 1 or 2 standards and must be shipped within 7 days after the harvest date. The shipping date may be modified based on the expected shelf life of a particular fruit or vegetable, as long as the modified shipping date will not affect the grade 1 or 2 standards. The harvest date must be included on the invoice provided by the agricultural company to the food recovery entity.

(d) The department shall reimburse food recovery entities on a dollar-for-dollar basis for the purchase of high-quality fresh fruits and vegetables from agricultural companies plus a

10 cents per pound distribution reimbursement. To receive reimbursement, a food recovery entity must submit an invoice as prescribed by the department, which includes, at a minimum, the following information:

1. Ship date.

2. Ship location by city.

3. Harvest date.

4. Packaging type and size.

5. Delivery location by city.

6. Delivery date.

7. Received weight in total pounds for each crop.

8. Total price per pound for each crop.

9. Total invoice price paid.

10. Total pounds delivered.

(e) The department shall submit a report on the pilot program, including recommendations for legislation, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025.

(f) The department shall adopt rules to implement this subsection.

Section 2. For the 2022-2023 fiscal year, the sum of $5 million in nonrecurring funds is appropriated to the Department of Agriculture and Consumer Services to implement a pilot program pursuant to s. 595.420(8), Florida Statutes.

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 27, 2022

I respectfully request that **Senate Bill 1832**, relating to **Food Recovery,** be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

The Florida Senate

APPEARANCE RECORD

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

2.16.22
Meeting Date

AG SUB APPROP
Committee

1832
Bill Number or Topic

Amendment Barcode (if applicable)

Name ROBIN SAFLEY, CEO FEEDING FLORIDA Phone 850.228.3312

Address 1493 MARKET ST.
Street

Email

TALLAHASSEE 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:

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.

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.)

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

BILL:	PCS/CS/SB 1430 (732288)
INTRODUCER:	Appropriations Subcommittee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator Burgess
SUBJECT:	Insolvent Insurers
DATE:	February 18, 2022 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1430 amends several provisions of the Florida Insurance Code related to the Office of Insurance Regulation (OIR) and the Florida Insurance Guaranty Association (FIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss to claimants due to the insolvency of a workers' compensation insurer. The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casualty insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. Specifically, the bill:

- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates;
- Authorizes insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of assessments to the FIGA;
- Requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute;
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders;

- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method;
- Authorizes the Workers' Compensation Insurance Guaranty Association (WCIGA) to allow an insurer to make advance assessment payments in a single payment or on a quarterly basis based on cash-flow needs;
- Reduces the frequency of annual reconciliation reports subsequently filed with the WCIGA after the assessment year from a period of three years to a period of two years;
- Clarifies that an assessment paid before surcharges are collected is an advance; and
- Makes additional technical and conforming changes.

The bill provides that the officers and directors of an insolvent insurer may thereafter serve as an officer or director of an authorized insurer unless the OIR enters an order under section 624.310, Florida Statutes, demonstrating that the personal actions or omissions of the officer or director were a significant contributing cause to the insolvency.

The bill does not impact state revenues or expenditures.

The bill takes effective July 1, 2022.

II. Present Situation:

Officers and Directors of Insolvent Insurers

In general, Florida law gives the OIR broad authority to deny, suspend, or revoke an insurer's authority to transact insurance in Florida if it finds the insurer's officers and directors to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or
- Affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders, stockholders, investors, creditors, or the public, by manipulation of assets, accounts, or reinsurance or by bad faith.[1]

When an insurer becomes insolvent, current law requires the OIR to deny an officer or director of the insolvent insurer from thereafter serving in the same capacity for another insurer if the officer or director served in that capacity within two years preceding the insolvency of the insurer, unless the officer or director demonstrates to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.[2]

[1] Section 624.404(3)(a), F.S.
[2] Section 624.4073, F.S.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law[3] governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.[4] The Rating Law provides the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[5] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[6]

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

Workers' Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers' compensation insurers to record and report certain loss, expense, and claims experience to aid the OIR in making determinations concerning the adequacy of worker's compensation experience for ratemaking purposes.[7] Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;

[3] Section 627.011, F.S.
[4] Section 627.021, F.S.
[5] Section 627.062(1), F.S.
[6] Section 627.041, F.S.
[7] Section 627.914(1), F.S.

- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.[8]

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.[9]

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).[10] When an insurer goes into receivership due to insolvency, it ceases reporting to the NCCI and, therefore, its data is no longer reported to the OIR and not used in the determination and fixing of rates.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[11] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[12] in Florida and sets up guaranty payments where necessary.[13] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[14] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[15] Authorized insurers are required

[8] Section 627.914(2), F.S.
[9] Section 627.072(1), F.S.
[10] *See* Rule 69O-189.0055, F.A.C.
[11] 11 U.S.C. s. 109(b)(2).
[12] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. Section 631.904(4), F.S.
[13] Chapter 631, F.S.
[14] *See id.*
[15] *See e.g.*, ss. 631.51 and 631.902, F.S.

to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the FIGA[16] and the FWCIGA.[17]

Florida Insurance Guaranty Association

The FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid" delay and financial loss due to the financial insolvency of an insurer.[18] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[19] When a Florida property and casualty insurer becomes insolvent, the FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

The FIGA is funded through the liquidation of insolvent insurers. If an insurer's assets are insufficient to pay all claims, the FIGA can request, and the OIR can levy post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.[20] All assessments paid by the insurer pursuant to the levied assessment constitute advances of funds from the insurer to the FIGA.[21] The insurer may then, in turn, recoup the advance by applying the uniform assessment percentage levied by the OIR to all its policies of the same kind or line of business as were considered by the OIR in determining its assessment on the insurer.[22]

When the FIGA issues an assessment, it may require each member insurer pay the assessment either in a single payment before policy surcharges are collected (pay and recover), or in quarterly installments after the policy surcharges are collected (collect and remit).[23]

Assessments paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future. Insurers under this assessment methods are further required to file a reconciliation report with the FIGA within 90 days of the end of the assessment year that indicates:

- The amount of the initial payment before the assessment year;
- Whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection;
- The amount actually collected during the assessment year; and
- Such information contained on a form adopted by the FIGA and provided to the insurer in advance.[24]

[16] Chapter 631, part II, F.S.
[17] Chapter 631, part V, F.S.
[18] Section 631.51, F.S.
[19] Section 631.52, F.S.
[20] Section 631.57, F.S.
[21] Section 631.57(3)(c), F.S.
[22] *See id*.
[23] *See id*.
[24] Section 631.57(3)(f)1.d., F.S.

Florida Workers' Compensation Insurance Guaranty Association

The FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[25] The FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[26] and self-insurance funds.[27] When a workers' compensation insurer or self-insurance fund becomes insolvent, the FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

Like the FIGA, the FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, the FWCIGA, in conjunction with the OIR, may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.[28]

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.[29] Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.[30] The FWCIGA may choose to fund an assessment by either of the following methods:[31]

- Single payment, subject to true-up (pay and recover)[32] – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4[33] and would be recorded separately from the liability for the OIR reports; or

[25] Section 631.902, F.S.
[26] "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.
[27] "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.
[28] Section 631.914, F.S.
[29] Chapter 16-170, L.O.F.
[30] *See* s. 631.914, F.S.
[31] *See id.*
[32] Section 631.914(1)(d), F.S.
[33] *See* National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Nov. 4, 2019).

- Installment (collect and remit or pass-through) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.[34]

The insurer is required to submit a reconciliation report within 120 days following the end of the 12-month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.[35] This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.[36]

III. Effect of Proposed Changes:

Section 1 amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, to require the OIR to enter an order pursuant to s. 624.310, F.S., demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency, in order to prevent the officer or director from serving in the same capacity for another insurer. The bill thus eliminates an automatic prohibition against a person serving as an officer or director of an authorized insurer, or having direct or indirect control over selecting or appointing an officer or director, if such person was an officer or director of an insolvent insurer in the two years prior to the insolvency. That prohibition under current law does not apply if the officer or director can demonstrate to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 2 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Section 3 amends s. 631.57, F.S., related to the powers and duties of the Florida Insurance Guaranty Association (FIGA), to authorize the association to request the OIR's assessment order authorize insurers to make advance assessment payments in quarterly installments.

The bill provides an insurer discretion to forego recouping advances of assessments made to the association. The bill requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute. Furthermore, the bill clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

The bill specifies insurers, regardless of the required assessment payment method, must file one or more reconciliation reports with the association. Each reconciliation report must indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurer in advance.

The bill makes additional technical changes specific to surcharges.

[34] Section 631.914(1)(d), F.S.
[35] Section 631.914(1)(d)3., F.S.
[36] *See id.*

Section 4 amends s. 631.914, F.S., related to Workers' Compensation Insurance Guaranty Association (association) assessments, to provide the association with discretion to authorize an insurer that is required to pay an assessment before surcharges are collected, to pay the assessment either in a single payment or on a quarterly basis based on cash-flow needs.

The bill reduces the frequency of annual reconciliation reports subsequently filed after the assessment year from a period of three years to a period of two years.

The bill clarifies an assessment paid before surcharges are collected is an advance.

The bill provides technical changes by replacing the term "installment method" with "pass-through method" to reflect current operational terminology of the association.

The bill makes additional conforming changes.

Section 5 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.4073, 627.072, 631.57, and 631.914.

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 February 16, 2022:
The committee substitute:

- Requires insurers electing not to recoup assessments made to the Florida Insurance Guaranty Association (FIGA) to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute; and
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

CS by Banking and Insurance on January 18, 2022:
The committee substitute:

- Amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, shifts the burden for demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency to the OIR, rather than on the officer or director to demonstrate his or her personal actions or omissions were not a significant contributing cause of the insolvency.

B. Amendments:

None.

729540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 110 - 195

and insert:

expected to be recouped. If an insurer elects not to recoup, the amount recorded as an asset must be reduced to zero.

2. Unless an insurer elects not to recoup, assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the

729540

association. If an insurer elects not to recoup, no asset shall be recorded.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be advanced to the association and thereafter collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable. The association may request that the order issued by the office authorize insurers to remit the advance payments in four quarterly installments throughout the assessment year.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the account from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but

729540

which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file one or more ~~a~~ reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of ~~the initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount that ~~which~~ is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

729540

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. Notwithstanding this subparagraph, an insurer may elect not to collect from policyholders, in which case such insurer must make quarterly payments to the association equal to the amount of premium written in the previous quarter for policies in the classes protected by the account multiplied by

729540

the uniform percentage of premium set forth in the order levying the assessment. Insurers shall file one or more reconciliation

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

And the title is amended as follows:

Delete lines 16 - 25

and insert:

recoup advances; specifying requirements for insurers electing not to recoup; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments; authorizing the association to request that orders levying assessments issued by the office authorize a certain installment frequency for the remittance of advance payments by insurers; revising the requirement that certain insurers make payments, rather than initial payments, on a certain basis; requiring insurers to make quarterly payments to association under certain circumstances; revising insurer

347680

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and General Government (Burgess) recommended the following:

Senate Amendment to Amendment (729540)

Delete line 30

and insert:

quarterly installments.

By the Committee on Banking and Insurance; and Senator Burgess

597-02090-22 20221430c1

A bill to be entitled

An act relating to insolvent insurers; amending s. 624.4073, F.S.; revising a prohibition against certain insolvent insurers' former officers or directors serving as officers or directors of an insurer or having direct or indirect control over certain selection or appointment of officers or directors, to allow such activities unless the Office of Insurance Regulation enters a specified order; amending s. 627.072, F.S.; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; amending s. 631.57, F.S.; authorizing insurers remitting assessments to the Florida Insurance Guaranty Association, Incorporated, to elect not to recoup advances; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments; authorizing the association to request that orders levying assessments issued by the office authorize a certain installment frequency for the remittance of advance payments by insurers; revising the requirement that certain insurers make payments, rather than initial payments, on a certain basis; revising insurer reconciliation reporting requirements; providing reconciliation requirements for surcharges collected from policyholders; requiring insurers to treat the failure of an insured to pay a surcharge, rather than

597-02090-22 20221430c1

a recoupment charge, as a failure to pay the premium; revising construction; amending s. 631.914, F.S.; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; providing an effective date.

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

Section 1. Section 624.4073, Florida Statutes, is amended to read:

624.4073 Officers and directors of insolvent insurers.—Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period before the date the insurer became insolvent, for any insolvency that occurs on or after July 1, 2002, may ~~not~~ thereafter serve as an officer or director of an insurer authorized in this state or have direct or indirect control over the selection or appointment of an officer or director through contract, trust, or by operation of law, unless the office enters an order pursuant to s. 624.310 demonstrating that the ~~officer or director demonstrates that his or her~~ personal actions or omissions of the officer or director were ~~not~~ a significant contributing cause to the insolvency.

Section 2. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability

insurance, the following factors must ~~shall~~ be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 3. Paragraphs (c) and (f) through (i) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e),

constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f). An insurer remitting an assessment to the association as required by subparagraph (f)1. or subparagraph (f)2. may elect not to recoup advances.

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset must ~~shall~~ be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset must ~~shall~~ be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must

comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be advanced to the association and thereafter collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable. The association may request that the order issued by the office authorize insurers to remit the advance payments in four quarterly installments throughout the assessment year.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the account from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of direct written premium anticipated to be written in the subject lines of

business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file one or more ~~a~~ reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of ~~the initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount that ~~which~~ is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's

projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. Insurers shall file one or more reconciliation reports with the association which indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurers in advance.

(g) Insurers shall treat the failure of an insured to pay a surcharge ~~recoupment charge~~ as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action

by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments and related surcharges.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any surcharges ~~emergency assessments~~ that the insurer collects and ~~shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer~~ is not liable for uncollectible surcharges ~~emergency assessments~~.

Section 4. Paragraphs (c) and (d) of subsection (1) and paragraph (c) of subsection (4) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—

(1)

(c) The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy surcharges at a uniform percentage rate on new and renewal policies issued and effective during the assessment year ~~period of 12 months~~ beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

(d) The association may use a pass-through ~~an installment~~ method to require the insurer to remit the policy surcharge as collected or may require the insurer to remit the assessment to

the association before collecting the policy surcharge.

1. If the association elects to use the pass-through ~~installment~~ method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge is due and payable quarterly as collected throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c). Insurers are not required to advance funds if the association and the office elect to use the pass-through ~~installment~~ option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual policy surcharges collected offset by the obligation to the association.

2. If the association elects to require insurers to remit the assessment before surcharging the policy, the following shall apply:

a. On or before the date specified in the order of the office, insurers shall make an initial advance payment to the association of the percentage specified in the order multiplied by the insurer's direct written premiums received in this state for the preceding calendar year for the kinds of insurance included within such account before the beginning of the assessment year. The board may authorize an insurer to pay an assessment in a single payment or on a quarterly basis, based on cash-flow needs.

b. The levy order shall provide each insurer so assessed at least 30 days' written notice of the date the initial assessment payment is due and payable by the insurer.

c. Insurers shall collect policy surcharges at a uniform

percentage rate specified by the order, as described in paragraph (c).

d. Assessments levied under this subparagraph and paid by an insurer constitute advances of funds from the insurer to the association and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment year ~~period~~ and annually thereafter for a period of 2 ~~3~~ years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected for the assessment year. If the insurer's reconciled obligation is more than the amount paid to the association, the insurer shall pay the excess policy surcharges collected to the association. If the insurer's reconciled obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(4)

~~(c) The board may allow an insurer to pay an assessment on a quarterly basis.~~

Section 5. This act shall take effect July 1, 2022.

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

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 #1430**, relating to Insovent Insurers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

S. Approps AE&B
Committee

1430
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Black

Phone 509-8022

Address 1727 Highland Place
Street

Email Greg@waypointstrat.com

TLH FL 32308
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:
R Street Institute

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/16/22
Meeting Date

AEGG
Committee

1430
Bill Number or Topic

Amendment Barcode (if applicable)

Name _____ Phone 850-425-4000

Address 300 S. Duval St.
Street

Email _____

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: Florida Insurance Guaranty Assoc.

☐ 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.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2-16-21
Meeting Date

Ag + Nat Resource Approp
Committee

1430
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Reyes

Phone 920 502 1880

Address 817 Ingleside Ave
Street

Email rreyes@capitolgip.com

TAH FL 32303
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:

FL Workers Compensation Guaranty Assoc.

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.

S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 110 **Case No.:** **Type:**
Caption: Senate Appropriations Subcommittee on Agriculture, Environment, and General Government **Judge:**

Started: 2/16/2022 1:00:17 PM
Ends: 2/16/2022 2:34:23 PM **Length: 01:34:07**

1:00:20 PM Sen. Albritton (Chair)
1:01:54 PM TAB 1 - Senate Confirmation Hearing, Secretary of Business and Professional Regulation, Melanie Griffin (Tampa)
1:02:05 PM TAB 2 - Senate Confirmation Hearing, Executive Director of Northwest Florida Management District, Robert Seigler (Defuniak Springs)
1:03:22 PM S 70
1:03:33 PM Sen. Ausley
1:04:48 PM Am. 513390
1:04:56 PM Sen. Ausley
1:05:26 PM S 70 (con't)
1:05:41 PM Sen. Ausley
1:06:16 PM S 186
1:06:23 PM Sen. Brandes
1:09:28 PM Am. 157680
1:09:30 PM Sen. Brandes
1:10:22 PM Am. 202280
1:10:38 PM S 186 (con't)
1:10:46 PM Sen. Stewart
1:11:42 PM Sen. Brandes
1:11:51 PM Paul Handerhan, President, FAIR Foundation
1:12:38 PM Carolyn Johnson, Senior Director of Business Economic Development and Innovation Policy, FL Chamber of Commerce (waives in support)
1:12:43 PM Christine Ashburn, Chief of Communications, Legislative and External Affairs, Citizens Property Insurance (waives in support)
1:12:55 PM Sen. Boyd
1:13:20 PM Sen. Brandes
1:15:05 PM S 954
1:15:08 PM Sen. Brodeur
1:15:40 PM Am. 520676
1:15:45 PM Sen. Brodeur
1:18:46 PM David Cullen, Sierra Club Florida
1:21:24 PM Sen. Stewart
1:22:04 PM Sen. Brodeur
1:23:24 PM S 954 (con't)
1:23:30 PM D. Cullen (waives in opposition)
1:23:42 PM Diane Carr, Alliance for Automotive Innovation (waives in support)
1:23:48 PM Adam Potts, Advanced Energy Economy (waives in support)
1:23:49 PM Vi Rogers-Rivera, ReThink Energy Action Fund (waives in support)
1:24:36 PM S 1728
1:24:49 PM Sen. Boyd
1:33:54 PM Am. 741042
1:33:59 PM Sen. Boyd
1:35:23 PM S 1728 (con't)
1:35:29 PM Sen. Ausley
1:36:21 PM Sen. Boyd
1:37:31 PM Sen. Ausley
1:37:37 PM Sen. Boyd
1:37:40 PM Sen. Ausley
1:38:02 PM Sen. Boyd
1:38:11 PM Sen. Berman
1:39:00 PM Sen. Boyd
1:40:40 PM Sen. Berman

1:41:27 PM Sen. Boyd
1:42:45 PM George Feijoo, Consultant, Florida Insurance Council (waives in support)
1:42:52 PM Greg Black, R Street Institute (waives in support)
1:42:58 PM Carolyn Johnson, Senior Director of Business Economic Development and Innovation Policy, FL Chamber of Commerce (waives in support)
1:43:03 PM Kevin Comerer, Legislative Director, American Integrity Insurance (waives in support)
1:43:11 PM Adam Basford, Vice President of Governmental Affairs, Associated Industries of Florida (waives in support)
1:43:18 PM BG Murphy, Director of Government Affairs, Florida Association of Insurance Agents (waives in support)
1:43:29 PM Christine Ashburn, Chief of Communications, Legislative and External Affairs, Citizens Property Insurance (waives in support)
1:43:32 PM Paul Handerhan, President, FAIR Foundation
1:45:30 PM Tyler Chasez, Attorney, Florida Justice Association
1:49:06 PM Will Haselden, Attorney, Haselden Law
1:51:09 PM Sen. Stewart
1:52:38 PM Sen. Berman
1:53:34 PM Sen. Ausley
1:54:42 PM Sen Brodeur
1:56:16 PM Sen. Boyd
2:00:21 PM S 1426
2:00:29 PM Sen. Burgess
2:01:11 PM Am. 309240
2:02:01 PM Sen. Burgess
2:03:25 PM S 1426 (con't)
2:03:51 PM Frank Bernardino, Polk County (waives in support)
2:03:52 PM Robert Beltran (waives in support)
2:04:12 PM Beth Alvi, Director of Policy, Audobon Florida
2:05:58 PM Bradley Marshall, Earthjustice (waives in opposition)
2:06:12 PM Sen. Ausley
2:07:04 PM Sen. Mayfield
2:08:09 PM Sen. Albritton
2:08:25 PM Sen. Burgess
2:10:01 PM Sen. Rodrigues (Chair)
2:10:05 PM S 1764
2:10:20 PM Am. 244354
2:10:23 PM Sen. Albritton
2:12:41 PM S 1764 (con't)
2:12:50 PM Sen. Berman
2:13:10 PM Sen. Albritton
2:13:55 PM Sen. Rodrigues
2:13:59 PM Harvey Soto, Earthjustice (waives in opposition)
2:14:07 PM Bradley Marshall, Attorney, Earthjustice
2:16:07 PM Sen. Rodrigues
2:16:35 PM Sen. Albritton
2:17:12 PM Sen. Albritton (Chair)
2:17:24 PM S 1430
2:17:27 PM Sen. Burgess
2:18:16 PM Am. 729540
2:18:26 PM Sen. Burgess
2:18:50 PM Am. 347680
2:18:58 PM Sen. Burgess
2:19:29 PM Am. 729549 (con't)
2:19:54 PM S 1430 (con't)
2:20:05 PM Greg Black, R Street Institute (waives in support)
2:20:21 PM Florida Insurance Guaranty Association (waives in support)
2:20:28 PM Robert Reyes, FL Workers' Compensation Guaranty Association (waives in support)
2:20:48 PM Sen. Burgess
2:21:35 PM S 1476
2:21:45 PM Sen. Wright
2:22:54 PM Michael Jackson, Executive VP and CEO, Florida Pharmacy Association (waives in support)
2:23:14 PM Kelly Mallette, Small Business Pharmacies Aligned for Reform (waives in support)
2:23:19 PM Larry Williams, American Pharmacy Cooperative, Inc. (waives in support)

2:23:27 PM Claudia Davant (waives in support)
2:23:35 PM Melody Arnold, FL Association of Community Health Centers (waives in support)
2:23:42 PM Lauren Whritenour, EPIC Pharmacy (waives in support)
2:23:54 PM Joni Hunt, Halifax Health (waives in support)
2:23:59 PM Chris Nuland, Florida Chapter, American College of Physicans (waives in support)
2:24:11 PM Sen. Wright
2:24:48 PM S 1832
2:24:53 PM Sen. Brodeur
2:25:33 PM Am. 547326
2:25:58 PM Sen. Brodeur
2:27:01 PM S 1832 (con't)
2:27:05 PM Robin Safley, CEO, Feeding Florida (waives in support)
2:27:16 PM Sen. Stewart
2:27:53 PM Sen. Brodeur
2:29:50 PM Sen. Rodrigues (Chair)
2:29:51 PM S 1952
2:29:59 PM Sen. Albritton
2:30:47 PM Am. 598822
2:30:52 PM Sen. Albritton
2:31:56 PM Justin Thames, Florida Institute of CPAs (waives in support)
2:32:24 PM S 1952 (con't)
2:32:35 PM J. Thames (waives in support)
2:32:40 PM Abby Vail, KPMG (waives in support)
2:33:27 PM Sen. Albritton (Chair)
2:33:39 PM Sen. Bradley
2:33:48 PM Sen. Garcia
2:33:54 PM Sen. Berman