Tab 1	**SB 190** by **Steube (CO-INTRODUCERS) Young, Brandes**; (Similar to H 01057) E911 Systems

148958	A	S	RCS	AGG, Steube	btw L.12 - 13:	02/08 04:35 PM
784556	A	S	RCS	AGG, Steube	btw L.228 - 229:	02/08 04:35 PM

Tab 2	**CS/SB 438** by **BI, Lee (CO-INTRODUCERS) Campbell**; (Compare to CS/H 00783) Continuing Care Contracts

586436	A	S	RCS	AGG, Lee	btw L.2492 - 2493:	02/08 04:36 PM

Tab 3	**CS/SB 448** by **GO, Brandes**; (Compare to CS/H 01357) Agency for State Technology

Tab 4	**CS/SB 614** by **CA, Montford (CO-INTRODUCERS) Simmons, Powell, Taddeo**; (Identical to 1ST ENG/H 06003) Participant Local Government Advisory Council

Tab 5	**SB 780** by **Brandes (CO-INTRODUCERS) Campbell**; (Identical to H 00545) Prohibition Against Contracting with Scrutinized Companies

Tab 6	**SB 954** by **Passidomo**; (Similar to H 00517) State Employees' Prescription Drug Program

Tab 7	**CS/SB 1412** by **JU, Simmons**; (Compare to H 00687) Office of the Judges of Compensation Claims

836202	A	S	RCS	AGG, Simmons	Delete L.20 - 22:	02/08 05:23 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Senator Simmons, Chair
Senator Bean, Vice Chair

MEETING DATE: Thursday, February 8, 2018
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Bean, Vice Chair; Senators Broxson, Campbell, Gainer, Garcia, Mayfield, Powell, Rodriguez, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 190** Steube (Similar H 1057)	E911 Systems; Requiring that the Technology Program within the Department of Management Services develop and implement a plan to require that emergency dispatchers be able to transfer an emergency call from one E911 system to another E911 system in the state, etc. CU 01/25/2018 Favorable AGG 02/08/2018 Fav/CS AP	Fav/CS Yeas 10 Nays 0
2	**CS/SB 438** Banking and Insurance / Lee (Compare CS/H 783)	Continuing Care Contracts; Revising applicability of specified provisions of the Florida Insurance Code to the Office of Insurance Regulation's authority to regulate providers of continuing care and continuing care at-home; specifying conditions that qualify an applicant for a certificate of authority without first obtaining a provisional certificate of authority; providing and revising applicability of certain provisions to a person seeking to assume the role of general partner of a provider or seeking specified ownership, possession, or control of a provider's assets, etc. BI 01/16/2018 Fav/CS AGG 02/08/2018 Fav/CS AP RC	Fav/CS Yeas 10 Nays 0
3	**CS/SB 448** Governmental Oversight and Accountability / Brandes (Compare CS/H 1357)	Agency for State Technology; Revising certain powers, duties, and functions of the agency in collaboration with the Department of Management Services; authorizing the state data center within the agency to extend, up to a specified timeframe, certain service-level agreements; deleting a requirement for a service-level agreement to provide a certain termination notice to the agency, etc. GO 01/23/2018 Fav/CS AGG 02/08/2018 Favorable AP	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 614** Community Affairs / Montford (Identical H 6003)	Participant Local Government Advisory Council; Abolishing the Participant Local Government Advisory Council, etc. CA 01/16/2018 Fav/CS AGG 02/08/2018 Favorable AP	Favorable Yeas 10 Nays 0
5	**SB 780** Brandes (Identical H 545)	Prohibition Against Contracting with Scrutinized Companies; Prohibiting a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of any amount; requiring such contracts entered into or renewed on or after July 1, 2018, to include a provision authorizing termination of the contract under specified circumstances, etc. GO 01/16/2018 Favorable AGG 02/08/2018 Favorable AP	Favorable Yeas 8 Nays 2
6	**SB 954** Passidomo (Similar H 517)	State Employees' Prescription Drug Program; Requiring the Department of Management Services to implement formulary management cost-saving measures; removing a provision that prohibits the department from implementing a restricted prescription drug formulary or prior authorization program in the state employees' prescription drug program, etc. HP 01/23/2018 Favorable AGG 02/08/2018 Favorable AP	Favorable Yeas 10 Nays 0
7	**CS/SB 1412** Judiciary / Simmons (Compare H 687)	Office of the Judges of Compensation Claims; Specifying the salaries of full-time judges of compensation claims and the Deputy Chief Judge; requiring salaries to be paid out of the Workers' Compensation Administration Trust Fund, etc. JU 01/25/2018 Fav/CS AGG 02/08/2018 Fav/CS AP	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/SB 190 (889976)

INTRODUCER: Appropriations Subcommittee on General Government; Senators Steube and Young

SUBJECT: E911 Systems

DATE: February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	Davis	Betta	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 190 requires all counties to develop a plan for implementing a Text-to-911 system, and to have a system in place to receive E911 text messages by January 1, 2021. In Florida, Text-to-911 is currently available in 20 counties. Approximately 18 other counties are in the project planning stage to have this service implemented. By the end of 2018, more than 50 percent of the counties will have implemented or will be in the test phase of implementing Text-to-911.

The bill also requires the Technology Program (office) within the Department of Management Services to develop and implement a plan by January 1, 2019, to require a 911 public safety telecommunicator, when prudent and requested by a caller or when necessary, be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing the plan.
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in the state.
- Establish a date, considering any technological, logistical, financial, or other identified issues, by which all E911 systems in the state must be able to transfer emergency calls as described above.

The bill provides a legislative determination that the act fulfills an important state interest.

The bill is expected to increase the costs incurred by state and local governments by significant but indeterminate amounts.

II. Present Situation:

The Technology Program (office) within the Department of Management Services (department) oversees the E911 system in Florida.[1] The office is required to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan. The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[2] in the state.
- A system to meet specific local government requirements. The system is required to include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost necessary to implement the E911 system.

The office is responsible for the implementation and coordination of the plan, and must adopt any necessary rules and schedules related to public agencies[3] for implementing and coordinating the plan.

In 2007, the Florida Legislature established the E911 Board, which is composed of eleven members. The secretary of the department designates the chair of the E911 Board. The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry. The E911 Board's primary function is to administer the funds derived from a monthly fee on each subscriber with a Florida billing address (place of primary use). The E911 Board makes disbursements from the Wireless Emergency Telephone System Trust Fund to county governments and wireless providers in accordance with s. 365.173, F.S.[4]

The Secretary of the department, or his or her designee, is the director of the statewide emergency communications number E911 system and is authorized to coordinate the activities of the system with state, county, local, and private agencies. In implementing the system, the director must consult, cooperate, and coordinate with local law enforcement agencies.

Section 365.176(6), F.S., permits the formation of multijurisdictional or regional systems; and any system established pursuant to the section may include the jurisdiction, or any portion thereof, of more than one public agency.

[1] Section 365.171, F.S.

[2] The term “local government” means any city, county, or political subdivision of the state and its agencies. s. 365.171(3)(b), F.S.

[3] The term “public agency” means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. s. 365.171(3)(c), F.S.

[4] Department of Management Services, *Analysis of Senate Bill 1026* (December 11, 2017) (on file with the Senate Subcommittee on General Government).

Within the E911 system, public safety answering points (PSAPs) are the public safety agencies[5] that receive incoming 911 requests for assistance and dispatch appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.[6] There are 256 primary, secondary, and backup PSAPs in Florida.[7] According to the department, some counties are currently able to implement call routing between PSAPs within their county jurisdiction, but most, if not all, cannot route calls outside of their county without using an Emergency Service Internet Protocol Network (ESInet).[8] Currently, there is not a statewide ESInet established.[9]

In recognition that Next Generation 911 (NG-911)[10] services are a few years away, the E911 Board and the department have worked with the industry as part of a process to move forward on a critical short-term NG-911 component, the ability to provide text notifications to 911 PSAPs. To advance these efforts, the E911 Board and the department provide a planning resource to assist counties with their Text-to-911 implementation.[11]

Rule 60FF1-5, F.A.C., permits counties to request funding for Text-to-911 from the E911 Board. Counties whose request for funding is granted by the E911 Board shall not receive additional funding from the E911 Board for "Text-to-911" for 365 days from the date of the prior disbursement to the recipient.[12]

III. Effect of Proposed Changes:

The bill amends s. 365.172, F.S., to require counties to develop a plan for implementing a Text-to-911 system, and to have a system in place to receive E911 text messages by January 1, 2021.

The bill creates s. 365.176, F.S., to require the office to develop and implement a plan by January 1, 2019, to require that a 911 public safety telecommunicator,[13] when prudent and requested by a caller or when necessary, be able to transfer an emergency call from one local,

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[5] [5] "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services. Section 365.172(3)(x), F.S.

[6] Section 365.172(3)(y), F.S.

[7] Department of Management Services, *Analysis of Senate Bill 190* (Jan. 23, 2018) (on file with the Senate Subcommittee on General Government).

[8] *Id.*

[9] *Id.*

[10] Next Generation 911 refers to an initiative aimed at updating the 911 service infrastructure in the United States and Canada to improve public emergency communications services in a growingly wireless mobile society.

[11] Florida Department of Management Services, *State of Florida Text to 911 Initiative*, https://www.dms.myflorida.com/content/download/112482/625449/Statewide_Text-to-911_Initiative_8-11-2016.pdf at 3 (last visited January 18, 2018).

[12] *Id.*

[13] The term "911 public safety telecommunicator" means a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel. s. 401.465(1)(a), F.S.

multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. In developing and implementing this plan, the office is required to:

- Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing the plan.
- Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in the state.
- Establish a date, considering any technological, logistical, financial, or other identified issues, by when all E911 systems in the state must be able to transfer emergency calls as described above.

The bill amends s. 365.172, F.S., to add a cross-reference to the newly created statute.

The bill provides a legislative determination that the act fulfills an important state interest.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature."

The bill requires the development and implementation of a plan requiring 911 public safety telecommunicators, under certain circumstances, to be able to transfer and receive transfers of emergency calls from other local, multijurisdictional, or regional E911 systems in the state. The bill also requires the development and implementation of a plan requiring a Text-to-911 service countywide.

Section 4 of the bill specifies that ensuring 911 telecommunications are routed to the most appropriate 911 systems in the most expeditious manner possible in order to protect public safety fulfills an important state interest; however no such legislative declaration related to the Text-to-911 service is included.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to increase costs incurred by state and local governments by a significant but indeterminate amount. The cost to implement a Text-to-911 service will vary by county. Local governments may have to increase local taxes or fees to create a source of revenue to implement this service.[14] Counties are able to request funding but disbursement is limited.[15] In addition, the bill requires the department to develop and implement a plan that allows for the transfer of calls between E911 systems within Florida. Better coordination will allow local governments to continue improving and upgrading their E911 systems. The department indicates the costs to implement these requirements are unknown but are expected to be significant.[16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2009, the department submitted an application for an Enhanced 911 Act Grant Program that indicated total project costs would be $5.4 million for developing four long range initiatives, which included Statewide E911 Routing, Regional E911 Mapping, Statewide E911 Call Taker and 911 Personnel E-Training and Regional Enhanced 911 Backup/Training Public Safety Answering Point.[17]

VIII. Statutes Affected:

This bill substantially amends section 365.172 of the Florida Statutes.

This bill creates section 365.176 of the Florida Statutes.

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[14] Department of Management Services, *Analysis of Senate Bill 1026* (December 11, 2017) (on file with the Senate Subcommittee on General Government).
[15] *Id*.
[16] Department of Management Services, *Analysis of Senate Bill 190* (Jan. 23, 2018) (on file with the Senate Subcommittee on General Government).
[17]Enhanced 911 Act Grant Program, State of Florida Department of Management Services, Division of Telecommunications, E911 Plan Application/
https://www.dms.myflorida.com/content/download/63438/272174/Final_Federal_E911_Grant_Application_-_Florida.pdf

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS by Appropriations Subcommittee on General Government on February 8, 2018:

The committee substitute:

- Requires all counties to develop a plan for implementing a Text-to-911 system, and to have a system in place to receive E911 text messages by January 1, 2021; and
- Specifies that ensuring 911 telecommunications are routed to the most appropriate 911 systems in the most expeditious manner possible in order to protect public safety serves an important state interest.

B. Amendments:

None.

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

148958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Steube) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 12 and 13
4 insert:
5 Section 1. Subsection (15) of section 365.172, Florida
6 Statutes, is renumbered as subsection (16), and a new subsection
7 (15) is added to that section, to read:
8 365.172 Emergency communications number "E911."—
9 <u>(15) TEXT-TO-911 SERVICE.—Each county shall develop a</u>
10 <u>countywide implementation plan for text-to-911 services and, by</u>

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11 January 1, 2021, have in place a system to receive E911 text
12 messages from providers.
13
14 ================= T I T L E A M E N D M E N T ================
15 And the title is amended as follows:
16 Delete line 2
17 and insert:
18 An act relating to 911 services; amending s. 365.172,
19 F.S.; requiring counties to develop a plan for
20 implementing a text-to-911 system and implement a
21 system to receive E911 text messages by a specified
22 date; creating s. 365.176,

784556

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Steube) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 228 and 229
4 insert:
5 Section 3. The Legislature finds that there is an important
6 state interest in ensuring that 911 telecommunications are
7 routed to the most appropriate 911 system in the most
8 expeditious manner possible in order to protect public safety.
9 Thus, a proper and legitimate state purpose is served when local
10 government 911 public safety telecommunicators are able to

784556

11 transfer and receive transfers of emergency calls from other
12 local, multijurisdictional, or regional E911 systems in the
13 state. Therefore, the Legislature finds and declares that this
14 act fulfills an important state interest.
15
16 ================= T I T L E A M E N D M E N T ================
17 And the title is amended as follows:
18 Delete line 9
19 and insert:
20 definitions; providing a declaration of important
21 state interest; providing an effective date.

By Senator Steube

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A bill to be entitled

An act relating to E911 systems; creating s. 365.176, F.S.; requiring that the Technology Program within the Department of Management Services develop and implement a plan to require that emergency dispatchers be able to transfer an emergency call from one E911 system to another E911 system in the state; amending s. 365.172, F.S.; revising the applicability of definitions; providing an effective date.

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

Section 1. Section 365.176, Florida Statutes, is created to read:

365.176 Transfer of E911 calls between systems.—

(1) The office shall develop and implement a plan by January 1, 2019, to require that a 911 public safety telecommunicator, when prudent and requested by a caller or when necessary, be able to transfer an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state.

(2) In developing and implementing this plan, the office shall:

(a) Coordinate with public agencies to identify and resolve any technological or logistical issues in implementing this section.

(b) Identify or establish a system or clearinghouse for maintaining contact information for all E911 systems in the state.

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(c) Establish a date, considering any technological, logistical, financial, or other identified issues, by when all E911 systems in the state must be able to transfer emergency calls pursuant to subsection (1).

Section 2. Subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, ~~and~~ 365.174, and 365.176, the term:

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

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

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

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

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

(f) "Collocation" means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures,

59 cabinets, or buildings, and cables, brackets, and other
60 equipment associated with the location and operation of the
61 antennae.
62 (g) “Designed service” means the configuration and manner
63 of deployment of service the wireless provider has designed for
64 an area as part of its network.
65 (h) “Enhanced 911” or “E911” means an enhanced 911 system
66 or enhanced 911 service that is an emergency telephone system or
67 service that provides a subscriber with 911 service and, in
68 addition, directs 911 calls to appropriate public safety
69 answering points by selective routing based on the geographical
70 location from which the call originated, or as otherwise
71 provided in the state plan under s. 365.171, and that provides
72 for automatic number identification and automatic location-
73 identification features. E911 service provided by a wireless
74 provider means E911 as defined in the order.
75 (i) “Existing structure” means a structure that exists at
76 the time an application for permission to place antennae on a
77 structure is filed with a local government. The term includes
78 any structure that can structurally support the attachment of
79 antennae in compliance with applicable codes.
80 (j) “Fee” means the E911 fee authorized and imposed under
81 subsections (8) and (9).
82 (k) “Fund” means the Emergency Communications Number E911
83 System Fund established in s. 365.173 and maintained under this
84 section for the purpose of recovering the costs associated with
85 providing 911 service or E911 service, including the costs of
86 implementing the order. The fund shall be segregated into
87 wireless, prepaid wireless, and nonwireless categories.

88 (l) “Historic building, structure, site, object, or
89 district” means any building, structure, site, object, or
90 district that has been officially designated as a historic
91 building, historic structure, historic site, historic object, or
92 historic district through a federal, state, or local designation
93 program.
94 (m) “Land development regulations” means any ordinance
95 enacted by a local government for the regulation of any aspect
96 of development, including an ordinance governing zoning,
97 subdivisions, landscaping, tree protection, or signs, the local
98 government’s comprehensive plan, or any other ordinance
99 concerning any aspect of the development of land. The term does
100 not include any building construction standard adopted under and
101 in compliance with chapter 553.
102 (n) “Local exchange carrier” means a “competitive local
103 exchange telecommunications company” or a “local exchange
104 telecommunications company” as defined in s. 364.02.
105 (o) “Local government” means any municipality, county, or
106 political subdivision or agency of a municipality, county, or
107 political subdivision.
108 (p) “Medium county” means any county that has a population
109 of 75,000 or more but less than 750,000.
110 (q) “Mobile telephone number” or “MTN” means the telephone
111 number assigned to a wireless telephone at the time of initial
112 activation.
113 (r) “Nonwireless category” means the revenues to the fund
114 received from voice communications services providers other than
115 wireless providers.
116 (s) “Office” means the Technology Program within the

117 Department of Management Services, as designated by the
118 secretary of the department.
119 (t) “Order” means:
120 1. The following orders and rules of the Federal
121 Communications Commission issued in FCC Docket No. 94-102:
122 a. Order adopted on June 12, 1996, with an effective date
123 of October 1, 1996, the amendments to s. 20.03 and the creation
124 of s. 20.18 of Title 47 of the Code of Federal Regulations
125 adopted by the Federal Communications Commission pursuant to
126 such order.
127 b. Memorandum and Order No. FCC 97-402 adopted on December
128 23, 1997.
129 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.
130 d. Order No. FCC 98-345 adopted December 31, 1998.
131 2. Orders and rules subsequently adopted by the Federal
132 Communications Commission relating to the provision of 911
133 services, including Order Number FCC-05-116, adopted May 19,
134 2005.
135 (u) “Prepaid wireless category” means all revenues in the
136 fund received through the Department of Revenue from the fee
137 authorized and imposed under subsection (9).
138 (v) “Prepaid wireless service” means a right to access
139 wireless service that allows a caller to contact and interact
140 with 911 to access the 911 system, which service must be paid
141 for in advance and is sold in predetermined units or dollars,
142 which units or dollars expire on a predetermined schedule or are
143 decremented on a predetermined basis in exchange for the right
144 to access wireless service.
145 (w) “Public agency” means the state and any municipality,

146 county, municipal corporation, or other governmental entity,
147 public district, or public authority located in whole or in part
148 within this state which provides, or has authority to provide,
149 firefighting, law enforcement, ambulance, medical, or other
150 emergency services.
151 (x) “Public safety agency” means a functional division of a
152 public agency which provides firefighting, law enforcement,
153 medical, or other emergency services.
154 (y) “Public safety answering point,” “PSAP,” or “answering
155 point” means the public safety agency that receives incoming 911
156 requests for assistance and dispatches appropriate public safety
157 agencies to respond to the requests in accordance with the state
158 E911 plan.
159 (z) “Rural county” means any county that has a population
160 of fewer than 75,000.
161 (aa) “Service identifier” means the service number, access
162 line, or other unique identifier assigned to a subscriber and
163 established by the Federal Communications Commission for
164 purposes of routing calls whereby the subscriber has access to
165 the E911 system.
166 (bb) “Tower” means any structure designed primarily to
167 support a wireless provider’s antennae.
168 (cc) “Voice communications services” means two-way voice
169 service, through the use of any technology, which actually
170 provides access to E911 services, and includes communications
171 services, as defined in s. 202.11, which actually provide access
172 to E911 services and which are required to be included in the
173 provision of E911 services pursuant to orders and rules adopted
174 by the Federal Communications Commission. The term includes

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175 voice-over-Internet-protocol service. For the purposes of this
176 section, the term “voice-over-Internet-protocol service” or
177 “VoIP service” means interconnected VoIP services having the
178 following characteristics:
179 1. The service enables real-time, two-way voice
180 communications;
181 2. The service requires a broadband connection from the
182 user’s locations;
183 3. The service requires IP-compatible customer premises
184 equipment; and
185 4. The service offering allows users generally to receive
186 calls that originate on the public switched telephone network
187 and to terminate calls on the public switched telephone network.
188 (dd) “Voice communications services provider” or “provider”
189 means any person or entity providing voice communications
190 services, except that the term does not include any person or
191 entity that resells voice communications services and was
192 assessed the fee authorized and imposed under subsection (8) by
193 its resale supplier.
194 (ee) “Wireless 911 system” or “wireless 911 service” means
195 an emergency telephone system or service that provides a
196 subscriber with the ability to reach an answering point by
197 accessing the digits 911.
198 (ff) “Wireless category” means the revenues to the fund
199 received from a wireless provider from the fee authorized and
200 imposed under subsection (8).
201 (gg) “Wireless communications facility” means any equipment
202 or facility used to provide service and may include, but is not
203 limited to, antennae, towers, equipment enclosures, cabling,

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204 antenna brackets, and other such equipment. Placing a wireless
205 communications facility on an existing structure does not cause
206 the existing structure to become a wireless communications
207 facility.
208 (hh) “Wireless provider” means a person who provides
209 wireless service and:
210 1. Is subject to the requirements of the order; or
211 2. Elects to provide wireless 911 service or E911 service
212 in this state.
213 (ii) “Wireless service” means “commercial mobile radio
214 service” as provided under ss. 3(27) and 332(d) of the Federal
215 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and
216 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-
217 66, August 10, 1993, 107 Stat. 312. The term includes service
218 provided by any wireless real-time two-way wire communication
219 device, including radio-telephone communications used in
220 cellular telephone service; personal communications service; or
221 the functional or competitive equivalent of a radio-telephone
222 communications line used in cellular telephone service, a
223 personal communications service, or a network radio access line.
224 The term does not include wireless providers that offer mainly
225 dispatch service in a more localized, noncellular configuration;
226 providers offering only data, one-way, or stored-voice services
227 on an interconnected basis; providers of air-to-ground services;
228 or public coast stations.
229 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-8-18
Meeting Date

190
Bill Number (if applicable)

148958
Amendment Barcode (if applicable)

Topic: Text to 911

Name: Chris Doolin

Job Title: Consultant

Address: 1118 B Thomasville
Street

Tallahassee FlA 32308
City State Zip

Phone: 850-508-5492

Email: cdoolin@nettally.com

Speaking: [ ] For [ ] Against [x] Information

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

Representing: Small County Coalition

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 the Senator or Senate Professional Staff conducting the meeting)

2-8-18
Meeting Date

190
Bill Number (if applicable)

#148958
Amendment Barcode (if applicable)

Topic ______

Name Richard Pinsky

Job Title ______

Address 106 E. College Ave
Street

Tallahassee FL 32301
City State Zip

Phone ______

Email ______

Speaking: [x] For [ ] Against [ ] Information

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

Representing 9-1-1 Emergency Dispatchers

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-8-18
Meeting Date

190
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Richard Pinsky

Job Title

Address 106 E. College Ave
Street

Tallahassee FL
City State Zip

Phone

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing 9-1-1 Emergency Dispatchers

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

January 25, 2018

The Honorable David Simmons
Florida Senate
330 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Simmons,

I am writing this letter because my bill, SB 190 – E911 Systems, has been referred to the Senate Appropriations Subcommittee on General Government. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
❒ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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 General Government

BILL: PCS/CS/SB 438 (583222)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee and Senator Lee

SUBJECT: Continuing Care Contracts

DATE: February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AGG	**Recommend: Fav/CS**
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 438 revises provisions within the Insurance Code governing continuing care retirement communities (CCRC) or providers, which are regulated by the Office of Insurance Regulation (OIR). Generally, the CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. The CCRCs appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become sick or frail, they will receive the care they need.

The bill provides the following changes throughout ch. 651, F.S., relating to CCRCs:

Solvency/Financial Accountability:
- The bill creates an impairment framework to allow the OIR to work with the provider much earlier when negative financial trends are identified in order to mitigate or resolve any potential issues that would put residents' interests in jeopardy.
- The bill specifies that a provider is deemed to be experiencing a regulatory action level event and must submit a corrective action to the OIR if the provider's performance fails to meet certain requirements.
- The OIR must examine the provider and issue a corrective order specifying any corrective actions that the OIR deems necessary.

- Effective July 1, 2019, a provider is considered impaired if it does not meet the minimum liquid reserves requirements or debt service coverage ratios, as applicable.

Protections and Transparency for Residents:

- The bill requires the provider to make additional information, notices, and reports available to the residents or residents' council.
- The bill also provides an expanded process for resident complaints against providers, including the establishment of a complaint tracking system and a requirement that the OIR provide a written report to the complainant upon the disposition of a complaint.
- The bill provides the OIR with additional authority to approve or disapprove management. The bill would also allow the OIR to revoke, suspend, or take other administrative action in the event a CCRC does not remove a manager in a timely manner by the CCRC.

Regulatory Oversight:

- The bill clarifies the duty of a provider to respond to written correspondence from the OIR.
- The bill provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records.
- The bill provides that, if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility complies with ch. 651, F.S., the OIR is authorized to examine these entities.
- The bill clarifies and streamlines existing regulatory requirements. For example, the bill consolidates the application process for the acquisition of a facility and the issuance of certificate of authority (COA) into a single application.

The bill appropriates $74,141 from the Insurance Regulatory Trust Fund and one position with associated salary rate of 45,043. The OIR estimates it will need to modify current technology systems, which can be absorbed within existing resources.[1]

The bill provides an effective date of July 1, 2018.

II. Present Situation:

Continuing Care Retirement Communities (CCRC)

A provider or a CCRC offer shelter and nursing care or personal services upon the payment of an entrance fee.[2] The CCRCs offer a transitional approach to the aging process, accommodating residents' changing level of care. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. The CCRCs may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.[3] In addition to the entrance fee, a CCRC also generally

[1] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[2] Section 651.011(2), F.S.
[3] Sections 651.057 and 651.118, F.S.

charges residents monthly fees to cover costs related to health care and other aspects of community living. [4]

Regulatory oversight responsibility of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR).[5] The OIR regulates CCRC providers[6] as specialty insurers. The AHCA regulates aspects of CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.[7]

There are currently 70 licensed continuing care retirement communities in Florida.[8] About 30,000 residents live in CCRCs.[9]

Oversight by the Office of Insurance Regulation

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved by the OIR.[10]

Certificate of Authority (COA)

The OIR has primary responsibility to regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management capabilities of their managers and owners.[11] If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., the OIR may waive requirements of the chapter.[12]

In order to operate a CCRC in Florida, a provider must obtain from the OIR a COA predicated upon first receiving a provisional certificate of authority.[13] The application process involves submitting various financial statements and information, expectations of the financial condition of the project, and copies of contracts.[14] Further, the applicant must provide evidence that the applicant is reputable and of responsible character.[15] A certificate of authority will be issued once a provider meets the requirements prescribed in s. 651.023, F.S.[16]

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[4] AARP, *About Continuing Care Retirement Communities*, available at http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last viewed Jan. 7, 2018).
[5] Chapter 651, F.S.
[6] Section 651.011(12), F.S., a provider means an owner or operator.
[7] Agency for Health Care Administration reports, available at *http://www.floridahealthfinder.gov/reports-guides/nursinghomesfl.aspx* (last viewed Jan. 7, 2018) and s. 651.118, F.S.
[8] Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Aug. 2017), available at https://www.floir.com/siteDocuments/CCRCAdvisoryCouncilOIRPresentation08172017.pdf (last viewed Jan. 11, 2018).
[9] *Id.*
[10] Section 651.055(1), F.S.
[11] See ss. 651.021, 651.22, and 651.023, F.S.
[12] Section 651.028, F.S.
[13] Section 651.022, F.S.
[14] See ss. 651.021-651.023, F.S.
[15] Section 651.022(2)(c), F.S.
[16] Section 651.023(4)(a), F.S.

Continuing Care Contracts

A CCRC enters into contracts with seniors (residents) to provide housing and medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident as entrance fees range from around $100,000 to over $1 million. The CCRCs offer different types of contracts that provide for varying amounts of monthly fees and levels of healthcare discounts.

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident, during the first four years of occupancy in the CCRC by the resident.[17] However, many contracts exceed this requirement and contain minimum refund provisions that guarantee a refund of a specified portion (typically 50 to 90 percent) of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.[18]

Financial Requirements/Solvency

Each CCRC is required to file an annual report with the OIR, which includes an audited financial report and other detailed financial information, such as a listing of assets maintained in the liquid reserve required under s. 651.035, F.S., and information about fees required of residents.[19] Section 651.033, F.S., prescribes requirements relating to the establishment and maintenance of escrow accounts. Providers are required to maintain a minimum liquid reserve, as applicable, as prescribed in s. 651.035, F.S.

Rights of Residents in a Continuing Care Retirement Community

The OIR is authorized to discipline a facility for violations of residents' rights.[20] These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.[21]

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services.[22] The CCRCs are required to maintain and make available certain public information and records.[23]

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[17] Section 651.055, F.S.

[18] *See* Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Committee on Banking and Insurance).

[19] Section 651.026, F.S.

[20] Section 651.083, F.S.

[21] *Id*.

[22] Section 651.081, F.S.

[23] Section 651.091, F.S.

OIR Enforcement Authority

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional certificate of authority or a COA, the OIR must notify the provider of any deficiencies and require the provider to take corrective action within a period determined by the OIR. If the provider does not correct the deficiencies by the expiration of such time required by the OIR, the OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S. The OIR may deny, suspend, or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider for grounds specified in s. 651.106, F.S.

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider. Such claims are subordinate, however, to any secured claim. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

Department of Financial Services

The Department of Financial Services (DFS) may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.[24] Typically, residents will contact the DFS's Division of Consumer Services, which receives and resolves complaints involving products and entities regulated by the OIR or the DFS.[25]

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides that insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership. In Florida, the Division of Rehabilitation and Liquidation (division) within the DFS is responsible for managing insurance companies placed into receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

III. Effect of Proposed Changes:

Section 1 amends s. 651.011, F.S., to create definitions of the following terms: actuarial opinion, actuarial study, actuary, corrective order, days cash on hand, debt service coverage ratio, impaired, manager or management company, obligated group, occupancy, and regulatory action level event. The term, "impaired," means any of the following has occurred:

- A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, F.S., unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6), F.S., and is compliant with the approved payment schedule; or
- Beginning July 1, 2019:
  - For a provider with mortgage financing from a third-party lender or public bond issue, the provider's debt service coverage ratio is less than 1:1 and the provider's days cash on hand is less than 90; or

[24] *See* Rules 69O-193.062 and 69O-193.063, F.A.C.
[25] Section 624.307, F.S.

- For a provider without mortgage financing from a third-party lender or public bond issue, the provider's days cash on hand is less than 90.

Solvency/Financial Accountability

Section 12 amends s. 651.026, F.S., to provide that the annual report submitted to the Office of Insurance Regulation (OIR) must include the reporting of the management's calculation of the provider's debt service coverage ratio and days cash on hand for the current reporting period, and an opinion from an independent certified public accountant of the management's calculations. The OIR is required to publish an annual industry benchmarking report that contains specified information about the industry's performance.

Section 13 amends s. 651.0261, F.S., to codify the current discretionary monthly financial reporting rule[26] and revises the quarterly financial reporting requirements. This section provides the conditions that trigger a monthly financial reporting to the OIR. The OIR may waive the quarterly reporting requirements if a written request from a provider that is accredited or that has obtained an investment grade credit rating from a U.S. credit rating agency. Further, the section requires a provider to submit a detailed listing of assets in the minimum liquid reserve with the quarterly and monthly unaudited financial statement filings, if applicable, which will enable the OIR to determine whether the provider is impaired and to take action to assist providers who may fall below the impairment threshold.

Section 14 amends s. 651.028, F.S., relating to waivers of ch. 651, F.S., requirements. The section provides that if a provider or obligated group has obtained an investment grade credit rating from Moody's Investors Services, Standard & Poor's, or Fitch Ratings, the OIR may waive any requirements of ch. 631, F.S., if the OIR finds that such waivers are not inconsistent with the protections intended by this chapter. Currently, the OIR may waive ch. 631, F.S., requirements if a provider is accredited.

Section 15 amends s. 651.033, F.S., to clarify the terms and conditions relating to an escrow account and the duties of escrow agents. The section provides that an escrow agent must receive the OIR's prior approval before releasing escrowed funds with some exceptions. According to the OIR, these changes are based on conversations with escrow agents who expressed confusion over their statutory responsibilities because some of the requirements are beyond those customarily undertaken by escrow agents. The section also clarifies permissible investments (e.g., cash, cash equivalents, mutual funds, equities, or investment grade bonds) of escrowed funds and removes references to part II of ch. 625, F.S.

Section 16 creates s. 651.034, F.S., to establish a financial and operating framework of required actions if a regulatory action level event or impairment occurs. A regulatory action level event occurs when a provider fails to meet minimum requirements of two of the three following key indicators: occupancy rate, days cash on hand, and debt service coverage ratios. If the provider is a member of an obligated group with an investment grade credit rating, the indicators of the obligated group may be substituted. Once a regulatory action level event is triggered, the OIR is

[26] Rule 69O-193.005, F.A.C.

required to examine the provider, review the provider's corrective action plan, and issue a corrective order specifying any corrective actions that the OIR deems necessary.

Further, this section details the information the provider must submit to the OIR if a regulatory action level event occurs, which would include the submission of a corrective action plan within 30 days after the regulatory action level event. The OIR must approve or disapprove the corrective plan within 15 days. If an impairment occurs, the OIR must take action, which could include "any remedy available under ch. 631, F.S." An impairment is sufficient grounds for the Department of Financial Services (DFS) to be appointed as receiver, as provided in ch. 631, F.S. The section provides that the OIR may exempt a provider from provisions relating to the regulatory action level event and impairment if certain conditions are met.

Section 17 amends s. 651.035, F.S., relating to the minimum liquid reserve requirements and reporting. Each facility must file annually with the OIR a calculation of the minimum liquid reserve along with the annual report. The section allows a provider to withdraw funds held in escrow without the approval of the OIR if the amount in escrow exceeds the requirements of this section and the withdrawal will not affect compliance with this section. For all other proposed withdrawals, the provider must file information documenting the necessity of the withdrawal. Within 30 days after the file is deemed complete, the OIR must notify the provider of its approval or disapproval of the withdrawal request. The section also requires a provider that does not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of its annual property tax liability. This change modifies the current requirement that a provider hold funds equivalent to one year's property taxes in escrow as a reserve. The section authorizes the OIR to require the transfer of up to 100 percent of the funds held in the minimum liquid reserve to the custody of the Bureau of Collateral Management of the DFS if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets.

Section 27 amends s. 651.114, F.S., relating to delinquency proceedings and remedial rights. A provider must develop a plan for obtaining compliance or solvency within 30 days after a request from the advisory council or the office. The OIR or advisory council is required to respond within 30 days after receipt of a plan. If the financial conditions of the provider is impaired or the provider fails to submit a plan or submits a plan that is insufficient to correct the condition, the OIR may specify a plan. However, the section clarifies that the availability of remedial rights will not delay or prevent the OIR from taking regulatory measures it deems necessary.

The section requires a provider to give residents a written notice of a delinquency proceeding under ch. 631, F.S., within three business days of initiation. If a ch. 631, F.S., show cause order is issued, the provider must respond within 20 days after service, but no less than 15 days prior to the hearing. Any hearing must be held within 60 days after the order to show cause. A hearing to determine whether cause exists for DFS to be appointed a receiver must be commenced within 60 days after an order directing a provider to show cause. Further, the section provides that, notwithstanding s. 631.011, F.S., impairment of a provider, for purposes of s. 631.051, F.S., is defined according to the term, "impaired" in s. 651.011, F.S.

Regulatory Oversight

Section 3 amends s. 651.013, F.S., to expand the scope of laws applicable to continuing care retirement communities (CCRCs). Sections 624.307, 624.308, 624.310, 624.102, 624.311, 624.312, 624.318 and 624.422, F.S., are added. These provisions provide the OIR with additional authority to take enforcement authority against licensed entities, affiliates, and unlicensed entities subject to OIR's regulation. Further, these provisions specify that CCRCs must appoint the Chief Financial Officer for service of process; clarify the role of the DFS Division of Consumer Services in resolving consumer complaints; specify requirements for the retention of records by the OIR; and provide immunity from civil liability for persons providing the DFS, Financial Services Commission (FSC), or the OIR with information about the condition of an insurer and clarify the authority of the OIR in regards to examinations and investigations. Section 624.318, F.S., which applies generally to insurers, provides that it is the duty of every person being examined, and its officers, attorneys, employees, agents, and representatives, to "make freely available" to the OIR the accounts, records and documents during an examination or investigation. This section also specifies, "any individual who willfully obstructs the DFS, the OIR, or the examiner in the examinations or investigations authorized by this part is guilty of a misdemeanor." Finally, s. 624.312, F.S., provides that reproductions and certified copies of records are admissible as evidence. These requirements are consistent with the oversight of other licensees and consumer complaint handling subject to the Insurance Code.

Section 5 amends s. 651.021, F.S., which relates to the certificate of authority process, to move provisions relating to expansion of a certified facility to the newly created s. 651.0246, F.S.

Section 6 creates s. 651.0215, F.S., to allow an applicant to qualify for a certificate of authority without first obtaining a provisional certificate of authority if the following conditions are met:

- Placement of all reservation deposits and entrance fees in escrow and not pledging initial entrance fees for construction or purchase of the facility or a security for long-term financing;
- Compliance with the requirement of s. 651.022(2), F.S.;
- Submission of a feasibility study, financial forecasts or projections, an audited financial report, and quarterly unaudited financial reports;
- Evidence of compliance with lenders' conditions;
- Documentation evidencing that aggregate amount of entrance fee received by or pledged by the applicant and other specified sources equal at 100 percent of the aggregate cost of constructing, acquiring, equipping, and furnishing the facility plus 100 percent of the anticipated losses of the facility;
- Evidence that the applicant will meet minimum liquid requirements; and
- Such other reasonable data and information requested by the OIR.

Section 7 amends s. 651.022, F.S., which relates to the provisional certificate of authority process, to clarify that an applicant must disclose material changes that occur while a provisional certificate of authority application is pending before the OIR. This change is consistent with other requirements in the Insurance Code.

Section 8 amends s. 651.023, F.S., relating to the requirements for a certificate of authority application. After issuance of a provisional certificate of authority, the OIR will issue the holder a certificate of authority if the holder provides certain information. For example, an applicant

must submit a feasibility study that contains specified information, such as information evidencing commitments had been made for construction financing and long-term financing or a documented plan acceptable to the OIR. Further, audited financial reports are required. The bill clarifies the deadlines for the OIR's approval or denial of completed applications.

A certificate of authority may not be issued until documentation is submitted to the OIR evidencing the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee. In order for a unit to be considered reserved, the provider must collect a minimum deposit of the lesser of $40,000 or 10 percent of the then-current entrance fee for that unit. The provider may assess a forfeiture penalty of two percent of the entrance fee due to termination of the reservation contract after 30 days for any reason other than death or serious illness of the resident, the failure of the provider to meet obligations under the reservation contract, or other circumstances beyond the control of the resident.

Section 9 amends s. 651.024, F.S., relating to acquisitions, to clarify which filing or application for acquisition statutory provision applies to each type of transaction, including the new, consolidated provisions of s. 651.0245, F.S. The section clarifies that the assumption of the role of a general partner of a CCRC or the assumption of ownership, or possession of, or control over, 10 percent or more of a provider's assets requires an acquisition filing. However, this type of acquisition is not subject to the filing requirements pursuant to s. 651.022, s. 651.023, or s. 651.0245, F.S.

A person who seeks to acquire and become the provider for a facility will be subject to s. 651.0245, F.S., and will not be required to make filings pursuant to ss. 651.4615, 651.022, and 651.023, F.S. The section provides that a person may rebut a presumption of control by filing a disclaimer of control form with the OIR. The federal Securities and Exchange Commission (SEC) Schedule 13G form may be filed in lieu of a disclaimer of control form. This SEC filing is used to report a party's ownership of stock in a company. Insurers are permitted to use this filing, and some CCRCs have requested that the OIR accept such filings from them.

Section 10 creates s. 651.0245, F.S., to establish an application for the simultaneous acquisition of a facility and issuance of a certificate of authority. The section provides that a person must obtain the OIR's prior approval before acquiring a facility operating under an existing Certificate of Authority (COA) and engaging in the business of continuing care. Under current law, if a person applies to acquire an existing facility and become the provider, the person must submit an acquisition application, a provisional certificate of authority application, and a certificate of authority application. This section streamlines the application process by creating a single application.

Section 11 creates s. 651.0246, F.S., relating to expansions, to clarify the requirements and approval process. The section establishes requirements for an expansion of a facility equivalent to the addition of at least 20 percent of the existing units or 20 percent more continuing care at-home contracts. Such expansion applications will require the submission of a feasibility study to the OIR. The section prescribes the factors the OIR must consider in deciding whether to approve the application. It also requires 75 percent of the initial entrance fees/reservation deposits for continuing care contracts, and 50 percent of the moneys paid for initial fees for continuing care at-home contracts be placed in escrow or on deposit with the Department of

Financial Services (DFS). Up to 25 percent of these funds may be used for construction or financing. The escrow funds may be released once certain conditions are met. Only the provider, escrow agent, and the Office of Insurance Regulation (OIR) have standing under ch. 120, F.S., to seek redress regarding the OIR's decision regarding the release of escrow funds. The OIR has 90 days to review and act upon complete expansion applications. If a provider has exceeded the current statewide median for certain indicators, the provider is automatically granted authority to expand the total number of existing units by up to 35 percent upon submission of specified information and an attestation to the OIR.

Section 18 creates s. 651.043, F.S., relating to changes in management. This section establishes criteria for the OIR to use in determining whether management meets minimum qualification standards and allows for the disapproval and removal of unqualified management. This section requires management contracts be in writing and providers to file notices of a change in management within 10 days of the appointment of new management. The OIR must approve or disapprove the filing within 15 days after the filing is deemed complete. Disapproved management must be removed within 30 days after receipt of the OIR's notice. Currently, the OIR does not have authority to disapprove unaffiliated management except by taking action against the certificate of authority (COA) of the provider.

Effective July 1, 2018, management contracts must be in writing. Currently, Rule 690-193.002(13), F.A.C., specifies that a manager or management company agrees to administer the day-to-day activities of a facility pursuant to a written contract with the provider. However, the rule does not address situations where a manager or management company does not have a written contract with the provider. This change closes a loophole that has allowed management serving under an oral contract to evade regulation by the OIR.

Section 19 amends s. 651.051, F.S., to clarify the requirements relating to the maintenance of records and assets. The section provides that the records and assets of a provider must be maintained in Florida, or, if the provider's corporate office is located in another state, they must be electronically stored in a manner that will ensure the records are accessible to the OIR.

Section 23 amends s. 651.105, F.S., relating to examinations and inspections by the OIR. The section requires a provider to respond to written correspondence from the OIR. Further, the section provides that the OIR has standing to petition a circuit court for mandatory injunctive relief to compel access to and require a provider to produce requested records. Unless a provider or facility is impaired or subject to a regulatory level event, any parent, subsidiary, or affiliate is not subject to examination by the OIR as part of a routine examination. However, an exception is provided if a facility or provider relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate that the financial condition of the provider or facility is in compliance with ch. 651, F.S. The books and records of affiliates often reflect on the financial state of the provider and may be relevant to the ability of the continuing care retirement community (CCRC) to provide the care promised to residents.

Section 24 amends s. 651.106, F.S., to provide additional grounds for the OIR to refuse, suspend, or revoke a COA. The section provides that the OIR may deny an application, suspend, or revoke the provisional certificate of authority or certificate of authority if the provider is

impaired or the owners, managers, or controlling persons are not reputable or lack sufficient management expertise or experience to operate a CCRC. Other grounds are delineated.

Section 25 creates s. 651.1065, F.S., relating to soliciting or accepting new contracts by impaired or insolvent facilities or providers. This section prohibits an impaired or insolvent provider from soliciting or accepting new contracts after the proprietor, general partner, its member, officer, director, trustee, or manager knew, or reasonably should have known, that the CCRC is impaired or insolvent, even if a delinquency hearing had not been initiated. According to the OIR, this provision will help to protect potential residents who may be considering investing substantial funds into the purchase of a CCRC contract. The OIR will have discretion to allow the issuance of new contracts where safeguards are adequate unless the facility had declared bankruptcy. The provision provides that a violation of this section is a felony of the third degree, which is consistent with regulations for other insurance entities.

Section 28 creates s. 651.1141, F.S., to clarify that certain statutory violations are an immediate danger to the public health, safety, or welfare, which allows the OIR to issue an immediate final order to cease and desist. These violations are:

- Installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024, F.S., or s. 651.0245, F.S.;
- The removal or commitment of 10 percent or more for the required minimum liquid reserve funds in violation of s. 651.035, F.S.; or
- The assumption of control over a facility's operations in violation of s. 651.043, F.S., has occurred.

This section will allow the OIR to take more expedited action to protect the assets of the provider and the significant investments of the residents.

Section 30 amends s. 651.125, F.S., relating to criminal penalties and injunctive relief, to clarify that any person who assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to ch. 651, F.S., without a valid provisional certificate of authority or certificate of authority commits a felony of the third degree.

Increased Transparency and Protections for Residents

Section 4 amends s. 651.019, F.S., provisions relating to CCRC financing. A provider must notify the residents' council of any new financing or refinancing at least 30 days before the closing date of the transaction. This allows residents to object to financing transactions that concern them. Under current law, the residents' council receives notice of all financing documents filed with the OIR. Such documents must be submitted to the OIR within 30 days after the closing date to remove the perception that the OIR can prevent a provider from securing new financing, additional financing, or refinancing that may be hazardous to the residents. Currently, providers are required to file a general outline and intended use of proceeds with the OIR prior to the closing date of the financing.

Section 21 amends s. 651.071, F.S., to deem all continuing care and continuing care at-home contracts preferred claims or policyholder loss claims pursuant to s. 631.271(1)(b), F.S., in the

event the provider is liquidated or put into receivership. The intent of this provision is to protect the claims of residents in the event of a liquidation.

Section 22 amends s. 651.091, F.S., to create additional provider reporting requirements to the residents or residents' council. These reports will help residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests. The section requires the provider to furnish information to the chair of the residents' council, such as, a notice of the issuance of any examination reports, a notice of the initiation of any legal or administrative proceedings by the OIR or the DFS, and the reasons for any increase in the monthly fee that exceeds the consumer price index.

Section 26 amends s. 651.111, F.S., relating to resident complaints and inspections by the OIR to provide more guidance as to inspections or investigations by the OIR regarding the status and resolution of the complaint. The section requires the OIR to acknowledge receipt of a complaint within 15 days and issue a written closure statement to the complainant upon the final disposition of the complaint.

Section 29 amends s. 651.121, F.S., relating to the Continuing Care Advisory Council, to increase the number of residents on the council from three to four and remove the requirement that one of the 10 members is an attorney.

Sections 2 and 20 provide technical, conforming changes.

Section 31 provides the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides additional consumer protections for current and potential residents of a continuing care retirement community (CCRC).

A CCRC whose performance falls below the key indicators may incur increased costs in providing additional information to the OIR. Costs of acquisition may decrease due to the consolidation of the three filings currently required into one filing.

C. Government Sector Impact:

Office of Insurance Regulation. The OIR[27] indicates that it needs one additional full time equivalent employee (FTE), a Reinsurance Financial Specialist, at a cost of $74,141, to implement the provisions of the bill.[28] In addition, the OIR estimates it will need to modify current technology systems. The OIR indicates the required technology systems modifications can be absorbed within existing resources.[29]

VI. Technical Deficiencies:

Consumer Complaints, Examinations, Investigations, and Inspections

The handling of complaints and inspections, as provided in Section 26 of the bill, may create confusion and duplication with the existing provisions found in s. 624.307, F.S., and s. 651.105, F.S. Section 651.105, F.S., relates to the Office of Insurance Regulations' (OIR's) authority to conduct examinations and inspections. Currently, s. 624.307(10), F.S., authorizes the Department of Financial Services' (DFS') Division of Consumer Services (division) to receive and respond to complaints concerning products or services regulated by the DFS or the OIR, which would include continuing care retirement communities (CCRCs). According to the DFS, these types of inquiries are usually handled through coordination between the OIR and the division because the OIR lacks personnel to handle consumer inquiries but the division lacks access to financial documents as well as the technical knowledge to interpret and understand financial reports. Consumer inquiries are logged into the division's database and follow the same timelines and requirements as other entities regulated by the OIR.[30] Consumers may initiate contact with the DFS through the DFS website or by telephone.

Section 26 of the bill amends s. 651.111, F.S., relating to complaints and inspections received by the OIR. Under current law, the OIR is required to make an inspection unless the OIR determines a complaint is without reasonable basis. The language appears to require the OIR to make an inspection if one is requested even if the OIR determines the request is without merit. The term, "inspection," is used in ss. 651.105 and 651.111, F.S.; however, the term is undefined.

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[27] Office of Insurance Regulation, *Analysis of SB 438* (Oct. 11, 2017) (on file with the Senate Banking and Insurance Committee).
[28] *Id* at pp. 8-9.
[29] Conversation with Richard Fox, Budget Director, Office of Insurance Regulation (February 5, 2018).
[30] Department of Financial Services, *Analysis of SB 438* (Dec. 28, 2017) (on file with Senate Banking and Insurance Committee).

Solvency

Currently, chapters 631, F.S., relating to insurer insolvency, and 651, F.S., do not define the term "impaired." However, s. 631.051, F.S., does use the term as one of the grounds for the initiation of delinquency proceedings. In addition, The Insurance Code uses the terms "impaired" and "impairment" throughout but does not define either term. **Section 1** of the bill contains a definition of "impaired" and given that term is not defined in ch. 631, F.S., it is unclear how the receivership court would treat actions based on the amended definition of "impaired." [31]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.019, 651.021, 651.022, 651.023, 651.024, 651.026, 651.0261, 651.028, 651.033, 651.035, 651.051, 651.057, 651.071, 651.091, 651.105, 651.106, 651.111, 651.114, 651.1151, 651.121, and 651.125.

This bill creates the following sections of the Florida Statutes: 651.0215, 651.0245, 651.0246, 651.034. 651.043, 651.1065, and 651.1141.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 8, 2018:

The committee substitute provides an appropriation of $74,141 and one full time equivalent position with associated salary rate of 45,043 to the Office of Insurance Regulation.

CS by Banking and Insurance on January 16, 2018:

The CS provides the following changes:

- Revises definitions.
- Creates consolidated application for provisional certificate of authority and certificate of authority.
- Revises and clarifies escrow account requirements.
- Revises requirements for expansions.
- Revises annual and quarterly report requirements.
- Allows the Office of Insurance Regulation (OIR) to waive requirements of ch. 651, F.S., if a provider or obligator group has obtained an investment grade credit rating and has met certain conditions.

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[31] Department of Financial Services, *Analysis of SB 438* (Oct. 16, 2017) (on file with Senate Banking and Insurance Committee).

- Revises minimum liquid reserve requirements.
- Revises provisions relating to approval of changes in management.
- Revises maintenance of record provisions.
- Revises provisions relating to examinations and inspections.
- Revises grounds for discretionary refusal, suspension, or revocation of a certificate of authority.
- Provides technical, conforming changes.

B. Amendments:

None.

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

586436

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2018	.	
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	.	
	.	

Appropriations Subcommittee on General Government (Lee) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 2492 and 2493
4 insert:
5 Section 31. Effective July 1, 2018, the sum of $74,141 in
6 recurring funds from the Insurance Regulatory Trust Fund is
7 appropriated to the Office of Insurance Regulation, and one
8 full-time equivalent position with associated salary rate of
9 45,043 is authorized, for the purpose of administering this act.
10

586436

11 ================= T I T L E A M E N D M E N T ================
12 And the title is amended as follows:
13 Delete line 240
14 and insert:
15 technical change; providing an appropriation;
16 providing an effective date.

By the Committee on Banking and Insurance; and Senator Lee

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1 A bill to be entitled
2 An act relating to continuing care contracts; amending
3 s. 651.011, F.S.; defining and redefining terms;
4 amending s. 651.012, F.S.; conforming a cross-
5 reference; deleting an obsolete date; amending s.
6 651.013, F.S.; revising applicability of specified
7 provisions of the Florida Insurance Code to the Office
8 of Insurance Regulation's authority to regulate
9 providers of continuing care and continuing care at-
10 home; amending s. 651.019, F.S.; revising notice and
11 filing requirements for providers and facilities with
12 respect to new and additional financing and
13 refinancing; amending s. 651.021, F.S.; conforming
14 provisions to changes made by the act; creating s.
15 651.0215, F.S.; specifying conditions that qualify an
16 applicant for a certificate of authority without first
17 obtaining a provisional certificate of authority;
18 specifying requirements for the consolidated
19 application; requiring an applicant to obtain separate
20 certificates of authority for multiple facilities;
21 specifying procedures and requirements for the
22 office's review of such applications and issuance or
23 denial of certificates of authority; providing
24 requirements for reservation contracts, entrance fees,
25 and reservation deposits; authorizing a provider to
26 secure release of moneys held in escrow under
27 specified circumstances; providing construction
28 relating to the release of escrow funds; amending s.
29 651.022, F.S.; revising the office's authority to make

30 certain inquiries in the review of applications for
31 provisional certificates of authority; specifying
32 requirements for application amendments if material
33 changes occur; requiring applicants to submit a
34 specified feasibility study; revising procedures and
35 requirements for the office's review of such
36 applications; conforming a provision to changes made
37 by the act; making a technical change; conforming
38 cross-references; amending s. 651.023, F.S.; revising
39 requirements for an application for a certificate of
40 authority; specifying requirements for application
41 amendments if material changes occur; revising
42 procedures and requirements for the office's review of
43 such applications; revising minimum unit reservation
44 and minimum deposit requirements; revising conditions
45 under which a provider is entitled to secure release
46 of certain moneys held in escrow; conforming
47 provisions to changes made by the act; conforming
48 cross-references; amending s. 651.024, F.S.; providing
49 and revising applicability of certain provisions to a
50 person seeking to assume the role of general partner
51 of a provider or seeking specified ownership,
52 possession, or control of a provider's assets;
53 providing applicability of certain provisions to a
54 person seeking to acquire and become the provider for
55 a facility; providing procedures for filing a
56 disclaimer of control; defining terms; providing
57 standing to the office to petition a circuit court in
58 certain proceedings; creating s. 651.0245, F.S.;

59 prohibiting a person, without the office's prior
60 written approval, from acquiring a facility operating
61 under a subsisting certificate of authority and
62 engaging in the business of providing continuing care;
63 providing requirements for an applicant seeking
64 simultaneous acquisition of a facility and issuance of
65 a certificate of authority; requiring the Financial
66 Services Commission to adopt by rule certain
67 application requirements; requiring the office to
68 review applications and issue approvals or
69 disapprovals of filings in accordance with specified
70 provisions; defining terms; providing standing to the
71 office to petition a specified circuit court under
72 certain circumstances; providing procedures for filing
73 a disclaimer of control; providing construction;
74 authorizing the commission to adopt, amend, and repeal
75 rules; creating s. 651.0246, F.S.; requiring a
76 provider to obtain written approval from the office
77 before commencing construction or marketing for
78 specified expansions of a certificated facility;
79 providing that a provider is automatically granted
80 approval for certain expansions under specified
81 circumstances; defining the term "existing units";
82 providing applicability; specifying requirements for
83 applying for such approval; requiring the office to
84 consider certain factors in reviewing such
85 applications; providing procedures and requirements
86 for the office's review of applications and approval
87 or denial of expansions; specifying requirements for

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88 escrowed moneys and for the release of the moneys;
89 defining the term "initial entrance fee"; providing
90 construction; amending s. 651.026, F.S.; revising
91 requirements for annual reports that providers file
92 with the office; revising guidelines for commission
93 rulemaking; requiring the office to publish, within
94 specified timeframes, a specified annual report;
95 amending s. 651.0261, F.S.; revising requirements for
96 quarterly statements filed by providers and facilities
97 with the office; authorizing the office to waive
98 certain filing requirements under certain
99 circumstances; authorizing the office to require,
100 under certain circumstances, providers or facilities
101 to file monthly unaudited financial statements and
102 certain other information; authorizing the commission
103 to adopt certain rules; amending s. 651.028, F.S.;
104 authorizing the office, under certain circumstances,
105 to waive any requirement of ch. 651, F.S., for
106 providers or obligated groups having certain
107 accreditations or credit ratings; amending s. 651.033,
108 F.S.; revising requirements for escrow accounts and
109 escrow agreements; revising requirements for, and
110 restrictions on, agents of escrow accounts; revising
111 permissible investments for funds in an escrow
112 account; revising requirements for the withdrawal of
113 escrowed funds under certain circumstances; creating
114 s. 651.034, F.S.; specifying requirements and
115 procedures for the office if a regulatory action level
116 event occurs; authorizing the office to use members of

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117 the Continuing Care Advisory Council or retain
118 consultants for specified purposes; requiring affected
119 providers to bear fees, costs, and expenses for such
120 consultants; requiring the office to take certain
121 actions if an impairment occurs; authorizing the
122 office to forego taking action for a certain timeframe
123 under certain circumstances; providing immunity from
124 liability to the commission, the Department of
125 Financial Services, the office, and their employees or
126 agents for certain actions; requiring the office to
127 transmit any notice that may result in regulatory
128 action by certain methods; authorizing the office to
129 exempt a provider from specified requirements under
130 certain circumstances and for a specified timeframe;
131 authorizing the commission to adopt rules; providing
132 construction; amending s. 651.035, F.S.; revising
133 provider minimum liquid reserve requirements under
134 specified circumstances; deleting an obsolete date;
135 authorizing providers, under certain circumstances, to
136 withdraw funds held in escrow without the office's
137 approval; providing procedures and requirements to
138 request approval for certain withdrawals; providing
139 procedures and requirements for the office's review of
140 such requests; authorizing the office, under certain
141 circumstances, to order the immediate transfer of
142 funds in the minimum liquid reserve to the custody of
143 the department; providing that certain debt service
144 reserves of a provider are not subject to such
145 transfer provision; requiring facilities to file

146 annual calculations of their minimum liquid reserves
147 with the office and maintain such reserves beginning
148 at specified periods; requiring providers to fund
149 reserve shortfalls within a specified timeframe;
150 providing construction; creating s. 651.043, F.S.;
151 defining the term "management"; providing requirements
152 for a contract for management made after a certain
153 date; specifying procedures and requirements for
154 providers filing notices of change in management with
155 the office; specifying procedures, requirements, and
156 factors for the office's review of such changes and
157 approval or disapproval of the new management;
158 requiring management disapproved by the office to be
159 removed within a specified timeframe; authorizing the
160 office to take certain disciplinary actions under
161 certain circumstances; requiring providers to
162 immediately remove management under certain
163 circumstances; amending s. 651.051, F.S.; revising
164 requirements for the maintenance of a provider's
165 records and assets; amending s. 651.057, F.S.;
166 conforming cross-references; amending s. 651.071,
167 F.S.; revising construction as to the priority of
168 continuing care and continuing care at-home contracts
169 in the event of receivership or liquidation
170 proceedings against a provider; amending s. 651.091,
171 F.S.; revising requirements for continuing care
172 facilities and providers relating to the availability,
173 distribution, and posting of reports and records;
174 amending s. 651.105, F.S.; providing applicability of

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175 a provision of the Insurance Code relating to
176 examinations and investigations to the office’s
177 authority in examining certain applicants and
178 providers; requiring providers to respond to written
179 correspondence from the office and provide certain
180 information; declaring that the office has standing to
181 petition a circuit court for certain injunctive
182 relief; specifying venue; deleting a requirement for
183 the office to determine if certain disclosures have
184 been made; providing that a provider’s or facility’s
185 parent, subsidiary, or affiliate is not subject to
186 routine examination by the office except under certain
187 circumstances; authorizing the office to examine
188 certain parents, subsidiaries, or affiliates to
189 ascertain the financial condition of a provider under
190 certain circumstances; prohibiting the office, when
191 conducting an examination or inspection, from using
192 certain actuary recommendations for a certain purpose
193 or requesting certain documents under certain
194 circumstances; amending s. 651.106, F.S.; authorizing
195 the office to deny an application for a provisional
196 certificate of authority or a certificate of authority
197 on certain grounds; revising and adding grounds for
198 application denial or disciplinary action by the
199 office; creating s. 651.1065, F.S.; prohibiting
200 certain persons of a continuing care retirement
201 community, except with the office’s written
202 permission, from actively soliciting, approving the
203 solicitation or acceptance of, or accepting new

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204 continuing care contracts if they knew or should have
205 known that the retirement community was impaired or
206 insolvent; providing an exception; requiring the
207 office to approve or disapprove the continued
208 marketing of new contracts within a specified
209 timeframe; providing a criminal penalty; amending s.
210 651.111, F.S.; revising procedures and requirements
211 for the office’s review of complaints requesting
212 inspections of records and related financial affairs
213 of a provider; amending s. 651.114, F.S.; providing
214 that certain duties relating to a certain compliance
215 or solvency plan must be performed by the office, or
216 the Continuing Care Advisory Council at the request of
217 the office, rather than solely by the council;
218 providing construction relating to the office’s
219 authority to take certain measures; authorizing the
220 office to seek a recommended plan from the advisory
221 council; replacing the office with the department as
222 the entity taking certain actions under ch. 631, F.S.;
223 providing construction; revising circumstances under
224 which the department and office are vested with
225 certain powers and duties in regard to delinquency
226 proceedings; specifying requirements for providers to
227 notify residents and prospective residents of
228 delinquency proceedings; specifying procedures
229 relating to orders to show cause and hearings pursuant
230 to ch. 631, F.S.; revising facilities with respect to
231 which the office may not exercise certain remedial
232 rights; creating s. 651.1141, F.S.; authorizing the

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233 office to issue an immediate final order for a
234 provider to cease and desist from specified
235 violations; amending s. 651.121, F.S.; revising the
236 composition of the Continuing Care Advisory Council;
237 amending s. 651.125, F.S.; providing a criminal
238 penalty for certain actions performed without a valid
239 provisional certificate of authority; making a
240 technical change; providing an effective date.
241
242 Be It Enacted by the Legislature of the State of Florida:
243
244 Section 1. Section 651.011, Florida Statutes, is amended to
245 read:
246 651.011 Definitions.—As used in this chapter, the term:
247 (1) "Actuarial opinion" means an opinion issued by an
248 actuary in accordance with Actuarial Standards of Practice No. 3
249 for Continuing Care Retirement Communities, Revised Edition,
250 effective May 1, 2011, or any future amendments or replacements
251 to this standard which may be adopted by the Actuarial Standards
252 Board.
253 (2) "Actuarial study" means an analysis prepared for an
254 individual facility, or consolidated for multiple facilities,
255 for either a certified provider, as of a current valuation date
256 or the most recent fiscal year, or for an applicant, as of a
257 projected future valuation date, which includes an actuary's
258 opinion as to whether such provider or applicant is in
259 satisfactory actuarial balance in accordance with Actuarial
260 Standards of Practice No. 3 for Continuing Care Retirement
261 Communities, Revised Edition, effective May 1, 2011, or any

262 future amendments or replacements to this standard which may be
263 adopted by the Actuarial Standards Board.
264 (3) "Actuary" means an individual who is qualified to sign
265 an actuarial opinion in accordance with the American Academy of
266 Actuaries' qualification standards and who is a member in good
267 standing of the American Academy of Actuaries.
268 (4) ~~(1)~~ "Advertising" means the dissemination of written,
269 visual, or electronic information by a provider, or any person
270 affiliated with or controlled by a provider, to potential
271 residents or their representatives for the purpose of inducing
272 such persons to subscribe to or enter into a contract for
273 continuing care or continuing care at-home.
274 (5) ~~(2)~~ "Continuing care" or "care" means, pursuant to a
275 contract, furnishing shelter and nursing care or personal
276 services to a resident who resides in a facility, whether such
277 nursing care or personal services are provided in the facility
278 or in another setting designated in the contract for continuing
279 care, by an individual not related by consanguinity or affinity
280 to the resident, upon payment of an entrance fee. The terms may
281 also be referred to as a "life plan."
282 (6) ~~(3)~~ "Continuing Care Advisory Council" or "advisory
283 council" means the council established in s. 651.121.
284 (7) ~~(4)~~ "Continuing care at-home" means, pursuant to a
285 contract other than a contract described in subsection (5) ~~(2)~~,
286 furnishing to a resident who resides outside the facility the
287 right to future access to shelter and nursing care or personal
288 services, whether such services are provided in the facility or
289 in another setting designated in the contract, by an individual
290 not related by consanguinity or affinity to the resident, upon

291 payment of an entrance fee. The term may also be referred to as
292 a "life plan at-home."
293 (8) "Corrective order" means an order issued by the office
294 which specifies corrective actions the office has determined are
295 required.
296 (9) "Days cash on hand" means, for a facility or obligated
297 group, the quotient obtained by dividing the value of paragraph
298 (a) by the value of paragraph (b).
299 (a) The sum of unrestricted cash, unrestricted short-term
300 and long-term investments, provider restricted funds, and the
301 minimum liquid reserve as of the reporting period.
302 (b) Operating expenses less depreciation, amortization, and
303 other noncash expenses and nonoperating losses, divided by 365.
304 Operating expenses, depreciation, amortization, and other
305 noncash expenses and nonoperating losses are each the sum of
306 their respective values over the 12-month period immediately
307 preceding the reporting date.
308
309 With prior written approval of the office, a demand note or
310 other parental guarantee may be considered a short-term or long-
311 term investment for the purposes of paragraph (a). However, the
312 total of all demand notes issued by the parent may not, at any
313 time, be more than the sum of unrestricted cash and unrestricted
314 short-term and long-term investments held by the parent.
315 (10) "Debt service coverage ratio" means, for a facility or
316 obligated group, the quotient obtained by dividing the value of
317 paragraph (a) by the value of paragraph (b).
318 (a) The sum of total expenses less interest expense on the
319 facility, depreciation, amortization, and other noncash expenses

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320 and nonoperating losses, subtracted from the sum of total
321 revenues and gross entrance fees received less earned entrance
322 fees and refunds paid. Expenses, interest expense on the
323 facility, depreciation, amortization, other noncash expenses and
324 nonoperating losses, revenues, noncash revenues, nonoperating
325 gains, gross entrance fees, earned entrance fees, and refunds
326 are each the sum of their respective values over the 12-month
327 period immediately preceding the reporting date.
328 (b) Total annual principal and interest expense due on the
329 facility or obligated group over the 12-month period immediately
330 preceding the reporting date. For purposes of this paragraph,
331 principal excludes any balloon principal payment amounts, and
332 interest expense due is the sum of the interest over the 12-
333 month period immediately preceding the reporting date which is
334 reflected in the provider's audit.
335 (11) ~~(5)~~ "Entrance fee" means an initial or deferred payment
336 of a sum of money or property made as full or partial payment
337 for continuing care or continuing care at-home. An accommodation
338 fee, admission fee, member fee, or other fee of similar form and
339 application are considered to be an entrance fee.
340 (12) ~~(6)~~ "Facility" means a place where continuing care is
341 furnished and may include one or more physical plants on a
342 primary or contiguous site or an immediately accessible site. As
343 used in this subsection, the term "immediately accessible site"
344 means a parcel of real property separated by a reasonable
345 distance from the facility as measured along public
346 thoroughfares, and the term "primary or contiguous site" means
347 the real property contemplated in the feasibility study required
348 by this chapter.

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~~(7) “Generally accepted accounting principles” means those accounting principles and practices adopted by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants, including Statement of Position 90-8 with respect to any full year to which the statement applies.~~

(13) “Impaired” means that any of the following have occurred:

(a) A provider has failed to maintain its minimum liquid reserve as required in s. 651.035, unless the provider has received prior written approval from the office for a withdrawal pursuant to s. 651.035(6) and is compliant with the approved payment schedule; or

(b) Beginning July 1, 2019:

1. For a provider with mortgage financing from a third-party lender or public bond issue, the provider’s debt service coverage ratio is less than 1.00:1 and the provider’s days cash on hand is less than 90; or

2. For a provider without mortgage financing from a third-party lender or public bond issue, the provider’s days cash on hand is less than 90.

(14)~~(8)~~ “Insolvency” means the condition in which a ~~the~~ provider is unable to pay its obligations as they come due in the normal course of business.

(15)~~(9)~~ “Licensed” means that a ~~the~~ provider has obtained a certificate of authority from the office ~~department~~.

(16) “Manager” or “management company” means a person who administers the day-to-day business operations of a facility for a provider, subject to the policies, directives, and oversight

of the provider.

(17)~~(10)~~ “Nursing care” means those services or acts rendered to a resident by an individual licensed or certified pursuant to chapter 464.

(18) “Obligated group” means one or more entities that jointly agree to be bound by a financing structure containing security provisions and covenants applicable to the group. For purposes of this subsection, debt issued under such a financing structure must be a joint and several obligation of each member of the group.

(19) “Occupancy” means the total number of occupied independent living, assisted living, and skilled nursing units in a facility divided by the total number of units in that facility, excluding units that are unavailable to market or reserve, as of the most recent annual report.

(20)~~(11)~~ “Personal services” has the same meaning as in s. 429.02.

(21)~~(12)~~ “Provider” means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator provides continuing care or continuing care at-home for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. The term does not apply to an entity that has existed and continuously operated a facility located on at least 63 acres in this state providing residential lodging to members and their spouses for

407 at least 66 years on or before July 1, 1989, and has the
408 residential capacity of 500 persons, is directly or indirectly
409 owned or operated by a nationally recognized fraternal
410 organization, is not open to the public, and accepts only its
411 members and their spouses as residents.
412 (22) ~~(13)~~ "Records" means all documents, correspondence, and
413 ~~the permanent~~ financial, directory, and personnel information
414 and data maintained by a provider pursuant to this chapter,
415 regardless of the physical form, characteristics, or means of
416 transmission.
417 (23) "Regulatory action level event" means that any two of
418 the following have occurred:
419 (a) The provider's debt service coverage ratio is less than
420 the minimum ratio specified in the provider's bond covenants or
421 lending agreement for long-term financing, or, if the provider
422 does not have a debt service coverage ratio required by its
423 lending institution, the provider's debt service coverage ratio
424 is less than 1.20:1 as of the most recent annual report filed
425 with the office. If the provider is a member of an obligated
426 group having cross-collateralized debt and the obligated group
427 has obtained an investment grade credit rating from a nationally
428 recognized credit rating agency, as applicable, from Moody's
429 Investors Service, Standard & Poor's, or Fitch Ratings, the
430 obligated group's debt service coverage ratio will be used as
431 the provider's debt service coverage ratio.
432 (b) The provider's days cash on hand is less than the
433 minimum number of days cash on hand specified in the provider's
434 bond covenants or lending agreement for long-term financing. If
435 the provider does not have a days cash on hand required by its

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436 lending institution, the days cash on hand may not be less than
437 100 as of the most recent annual report filed with the office.
438 If the provider is a member of an obligated group having cross-
439 collateralized debt and the obligated group has obtained an
440 investment grade credit rating from a nationally recognized
441 credit rating agency, as applicable, from Moody's Investors
442 Service, Standard & Poor's, or Fitch Ratings, the days cash on
443 hand of the obligated group will be used as the provider's days
444 cash on hand.
445 (c) The occupancy at the provider's facility is less than
446 80 percent, averaged over the 12-month period immediately
447 preceding the reporting date.
448 (24) ~~(14)~~ "Resident" means a purchaser of, a nominee of, or
449 a subscriber to a continuing care or continuing care at-home
450 contract. Such contract does not give the resident a part
451 ownership of the facility in which the resident is to reside,
452 unless expressly provided in the contract.
453 (25) ~~(15)~~ "Shelter" means an independent living unit, room,
454 apartment, cottage, villa, personal care unit, nursing bed, or
455 other living area within a facility set aside for the exclusive
456 use of one or more identified residents.
457 Section 2. Section 651.012, Florida Statutes, is amended to
458 read:
459 651.012 Exempted facility; written disclosure of
460 exemption.—Any facility exempted under ss. 632.637(1)(e) and
461 651.011(21) ~~651.011(12)~~ must provide written disclosure of such
462 exemption to each person admitted to the facility ~~after October~~
463 ~~1, 1996~~. This disclosure must be written using language likely
464 to be understood by the person and must briefly explain the

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exemption.

Section 3. Subsection (2) of section 651.013, Florida Statutes, is amended to read:

651.013 Chapter exclusive; applicability of other laws.—

(2) In addition to other applicable provisions cited in this chapter, the office has the authority granted under ss. 624.302 and 624.303, 624.307-624.312, 624.318 ~~624.308-624.312~~, 624.319(1)-(3), 624.320-624.321, 624.324, ~~and~~ 624.34, and 624.422 of the Florida Insurance Code to regulate providers of continuing care and continuing care at-home.

Section 4. Section 651.019, Florida Statutes, is amended to read:

651.019 New financing, additional financing, or refinancing.—

(1)(a) A provider shall provide notice to the residents' council of any new financing or refinancing at least 30 days before the closing date of the financing or refinancing transaction. The notice must include a general outline of the amount and terms of the financing or refinancing and the intended use of proceeds.

(b) If the facility does not have a residents' council, the facility must make available, in the same manner as other community notices, the information required by paragraph (a) ~~After issuance of a certificate of authority, the provider shall submit to the office a general outline, including intended use of proceeds, with respect to any new financing, additional financing, or refinancing at least 30 days before the closing date of such financing transaction~~.

(2) Within 30 days after the closing date of such financing

or refinancing transaction, ~~The provider shall furnish any information the office may reasonably request in connection with any new financing, additional financing, or refinancing, including, but not limited to, the financing agreements and any related documents, escrow or trust agreements, and statistical or financial data.~~ the provider shall ~~also~~ submit to the office copies of executed financing documents and escrow or trust agreements prepared in support of such financing or refinancing transaction, and a copy of all documents required to be submitted to the residents' council under paragraph (1)(a) ~~within 30 days after the closing date~~.

Section 5. Section 651.021, Florida Statutes, is amended to read:

651.021 Certificate of authority required.—

~~(1)~~ A ~~No~~ person may not engage in the business of providing continuing care, issuing contracts for continuing care or continuing care at-home, or constructing a facility for the purpose of providing continuing care in this state without a certificate of authority obtained from the office as provided in this chapter. This section ~~subsection~~ does not prohibit the preparation of a construction site or construction of a model residence unit for marketing purposes, or both. The office may allow the purchase of an existing building for the purpose of providing continuing care if the office determines that the purchase is not being made to circumvent the prohibitions in this section.

~~(2) Written approval must be obtained from the office before commencing construction or marketing for an expansion of a certificated facility equivalent to the addition of at least~~

~~20 percent of existing units or 20 percent or more in the number of continuing care at-home contracts. This provision does not apply to construction for which a certificate of need from the Agency for Health Care Administration is required.~~

~~(a) For providers that offer both continuing care and continuing care at-home, the 20 percent is based on the total of both existing units and existing contracts for continuing care at-home. For purposes of this subsection, an expansion includes increases in the number of constructed units or continuing care at-home contracts or a combination of both.~~

~~(b) The application for such approval shall be on forms adopted by the commission and provided by the office. The application must include the feasibility study required by s. 651.022(3) or s. 651.023(1)(b) and such other information as required by s. 651.023. If the expansion is only for continuing care at-home contracts, an actuarial study prepared by an independent actuary in accordance with standards adopted by the American Academy of Actuaries which presents the financial impact of the expansion may be substituted for the feasibility study.~~

~~(c) In determining whether an expansion should be approved, the office shall use the criteria provided in ss. 651.022(6) and 651.023(4).~~

Section 6. Section 651.0215, Florida Statutes, is created to read:

651.0215 Consolidated application for provisional certificate of authority and certificate of authority; required restrictions on use of entrance fees.—

(1) For an applicant to qualify for a certificate of

authority without first obtaining a provisional certificate of authority, the following conditions must be met:

(a) All reservation deposits and entrance fees must be placed in escrow in accordance with s. 651.033. The applicant may not use or pledge any part of an initial entrance fee for the construction or purchase of the facility or as security for long-term financing.

(b) The reservation deposit may not exceed $5,000 upon a resident’s selection of a unit and must be refundable at any time before the resident takes occupancy of the selected unit.

(c) The resident contract must state that collection of the balance of the entrance fee is to occur after the resident is notified that his or her selected unit is available for occupancy and on or before the occupancy date.

(2) The consolidated application must be on a form prescribed by the commission and must contain all of the following information:

(a) All of the information required under s 651.022(2).

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(3) and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

1. The feasibility study must take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and other factors that affect the

581 feasibility of operating the facility.
582 2. If the feasibility study is prepared by an independent
583 certified public accountant, it must contain an examination
584 report, or a compilation report acceptable to the office,
585 containing a financial forecast or projections for the first 5
586 years of operations which take into account an actuary's
587 mortality and morbidity assumptions as the study relates to
588 turnover, rates, fees, and charges. If the study is prepared by
589 an independent consulting actuary, it must contain mortality and
590 morbidity assumptions as it relates to turnover, rates, fees,
591 and charges and an actuary's signed opinion that the project as
592 proposed is feasible and that the study has been prepared in
593 accordance with Actuarial Standards of Practice No. 3 for
594 Continuing Care Retirement Communities, Revised Edition,
595 effective May 1, 2011.
596 (c) Documents evidencing that commitments have been secured
597 for construction financing and long-term financing or that a
598 documented plan acceptable to the office has been adopted by the
599 applicant for long-term financing.
600 (d) Documents evidencing that all conditions of the lender
601 have been satisfied to activate the commitment to disburse
602 funds, other than the obtaining of the certificate of authority,
603 the completion of construction, or the closing of the purchase
604 of realty or buildings for the facility.
605 (e) Documents evidencing that the aggregate amount of
606 entrance fees received by or pledged to the applicant, plus
607 anticipated proceeds from any long-term financing commitment and
608 funds from all other sources in the actual possession of the
609 applicant, equal at least 100 percent of the aggregate cost of

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610 constructing or purchasing, equipping, and furnishing the
611 facility plus 100 percent of the anticipated startup losses of
612 the facility.
613 (f) A complete audited financial report of the applicant,
614 prepared by an independent certified public accountant in
615 accordance with generally accepted accounting principles, as of
616 the date the applicant commenced business operations or for the
617 fiscal year that ended immediately preceding the date of
618 application, whichever is later, and complete unaudited
619 quarterly financial statements attested to by the applicant
620 after the date of the last audit.
621 (g) Documents evidencing that the applicant will be able to
622 comply with s. 651.035.
623 (h) Such other reasonable data, financial statements, and
624 pertinent information as the commission or office may require
625 with respect to the applicant or the facility to determine the
626 financial status of the facility and the management capabilities
627 of its managers and owners.
628 (3) If an applicant has or proposes to have more than one
629 facility offering continuing care or continuing care at-home, a
630 separate certificate of authority must be obtained for each
631 facility.
632 (4) Within 45 days after receipt of the information
633 required under subsection (2), the office shall examine the
634 information and notify the applicant in writing, specifically
635 requesting any additional information that the office is
636 authorized to require. An application is deemed complete when
637 the office receives all requested information and the applicant
638 corrects any error or omission of which the applicant was timely

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639 notified or when the time for such notification has expired.
640 Within 15 days after receipt of all of the requested additional
641 information, the office shall notify the applicant in writing
642 that all of the requested information has been received and that
643 the application is deemed to be complete as of the date of the
644 notice. Failure to notify the applicant in writing within the
645 15-day period constitutes acknowledgment by the office that it
646 has received all requested additional information, and the
647 application is deemed complete for purposes of review on the
648 date the applicant files all of the required additional
649 information.
650 (5) Within 45 days after an application is deemed complete
651 as set forth in subsection (4) and upon completion of the
652 remaining requirements of this section, the office shall
653 complete its review and issue or deny a certificate of authority
654 to the applicant. The period for review by the office may not be
655 tolled if the office requests additional information and the
656 applicant provides the requested information within 5 business
657 days. If a certificate of authority is denied, the office must
658 notify the applicant in writing, citing the specific failures to
659 satisfy this chapter, and the applicant is entitled to an
660 administrative hearing pursuant to chapter 120.
661 (6) The office shall issue a certificate of authority upon
662 determining that the applicant meets all requirements of law and
663 has submitted all of the information required under this
664 section, that all escrow requirements have been satisfied, and
665 that the fees prescribed in s. 651.015(2) have been paid.
666 (7) The issuance of a certificate of authority entitles the
667 applicant to begin construction and collect reservation deposits

668 and entrance fees from prospective residents. The reservation
669 contract must state the cancellation policy and the terms of the
670 continuing care contract to be entered into. All or any part of
671 an entrance fee or reservation deposit collected must be placed
672 in an escrow account or on deposit with the department pursuant
673 to s. 651.033.
674 (8) The provider is entitled to secure release of the
675 moneys held in escrow within 7 days after the office receives an
676 affidavit from the provider, along with appropriate
677 documentation to verify, and notification is provided to the
678 escrow agent by certified mail, that the following conditions
679 have been satisfied:
680 (a) A certificate of occupancy has been issued.
681 (b) Payment in full has been received for at least 70
682 percent of the total units of a phase or of the total of the
683 combined phases constructed. If a provider offering continuing
684 care at-home is applying for a release of escrowed entrance
685 fees, the same minimum requirement must be met for the
686 continuing care and continuing care at-home contracts
687 independently of each other.
688 (c) The provider has evidence of sufficient funds to meet
689 the requirements of s. 651.035, which may include funds
690 deposited in the initial entrance fee account.
691 (d) Documents evidencing the intended application of the
692 proceeds upon release and documents evidencing that the entrance
693 fees, when released, will be applied as represented to the
694 office.
695
696 Notwithstanding chapter 120, a person, other than the provider,

the escrow agent, and the office, may not have a substantial interest in any decision by the office regarding the release of escrow funds in any proceeding under chapter 120 or this chapter.

(9) The office may not approve any application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

(10) The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or part I of chapter 429, or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to s. 651.1151.

Section 7. Subsection (2) and present subsections (6) and (8) of section 651.022, Florida Statutes, are amended, present subsections (3) through (8) of that section are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority must ~~shall~~ be on a form prescribed by the commission and must ~~shall~~ contain the following information:

(a) If the applicant or provider is a corporation, a copy of the articles of incorporation and bylaws; if the applicant or provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association, or other membership agreement; and, if the applicant or provider is

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a trust, a copy of the trust agreement or instrument.

(b) The full names, residences, and business addresses of:

1. The proprietor, if the applicant or provider is an individual.

2. Every partner or member, if the applicant or provider is a partnership or other unincorporated association, however organized, having fewer than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the applicant or provider is a partnership or other unincorporated association, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the applicant or provider is a corporation.

5. Every trustee and officer, if the applicant or provider is a trust.

6. The manager, whether an individual, corporation, partnership, or association.

7. Any stockholder holding at least a 10 percent interest in the operations of the facility in which the care is to be offered.

8. Any person whose name is required to be provided in the application under this paragraph and who owns any interest in or

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receives any remuneration from, directly or indirectly, any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, with a real or anticipated value of $10,000 or more, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held. The applicant shall describe such goods, leases, or services and the probable cost to the facility or provider and shall describe why such goods, leases, or services should not be purchased from an independent entity.

9. Any person, corporation, partnership, association, or trust owning land or property leased to the facility, along with a copy of the lease agreement.

10. Any affiliated parent or subsidiary corporation or partnership.

(c)1. Evidence that the applicant is reputable and of responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, the form must ~~shall~~ require evidence that the members or shareholders ~~are reputable and of responsible character,~~ and the person in charge of providing care under a certificate of authority are ~~shall likewise be required to produce evidence of being~~ reputable and of responsible character.

2. Evidence satisfactory to the office of the ability of the applicant to comply with ~~the provisions of~~ this chapter and with rules adopted by the commission pursuant to this chapter.

3. A statement of whether a person identified in the application for a provisional certificate of authority or the

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administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

a. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

b. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400 or chapter 429.

The statement must ~~shall~~ set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office may make an inquiry to determine the accuracy of the information submitted pursuant to subparagraphs 1., 2., and 3. ~~1. and 2.~~

(d) The contracts for continuing care and continuing care at-home to be entered into between the provider and residents which meet the minimum requirements of s. 651.055 or s. 651.057 and which include a statement describing the procedures required by law relating to the release of escrowed entrance fees. Such statement may be furnished through an addendum.

(e) Any advertisement or other written material proposed to be used in the solicitation of residents.

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813 (f) Such other reasonable data, financial statements, and
814 pertinent information as the commission or office may reasonably
815 require with respect to the provider or the facility, including
816 the most recent audited financial report ~~statements~~ of
817 comparable facilities currently or previously owned, managed, or
818 developed by the applicant or its principal, to assist in
819 determining the financial viability of the project and the
820 management capabilities of its managers and owners.
821 (g) The forms of the residency contracts, reservation
822 contracts, escrow agreements, and wait list contracts, if
823 applicable, which are proposed to be used by the provider in the
824 furnishing of care. The office shall approve contracts and
825 escrow agreements that comply with ss. 651.023(1)(c), 651.033,
826 651.055, and 651.057. Thereafter, no other form of contract or
827 agreement may be used by the provider until it has been
828 submitted to the office and approved.
829
830 If any material change occurs in the facts set forth in an
831 application filed with the office pursuant to this subsection,
832 an amendment setting forth such change must be filed with the
833 office within 10 business days after the applicant becomes aware
834 of such change, and a copy of the amendment must be sent by
835 registered mail to the principal office of the facility and to
836 the principal office of the controlling company.
837 (3) In addition to the information required in subsection
838 (2), an applicant for a provisional certificate of authority
839 must submit a feasibility study with appropriate financial,
840 marketing, and actuarial assumptions for the first 5 years of
841 operations. The feasibility study must include at least the

842 following information:
843 (a) A description of the proposed facility, including the
844 location, size, anticipated completion date, and the proposed
845 construction program.
846 (b) Identification and an evaluation of the primary and, if
847 appropriate, the secondary market areas of the facility and the
848 projected unit sales per month.
849 (c) Projected revenues, including anticipated entrance
850 fees; monthly service fees; nursing care revenues, if
851 applicable; and all other sources of revenue.
852 (d) Projected expenses, including staffing requirements and
853 salaries; cost of property, plant, and equipment, including
854 depreciation expense; interest expense; marketing expense; and
855 other operating expenses.
856 (e) A projected balance sheet of the applicant.
857 (f) Expectations of the financial condition of the project,
858 including the projected cash flow, and an estimate of the funds
859 anticipated to be necessary to cover startup losses.
860 (g) The inflation factor, if any, assumed in the
861 feasibility study for the proposed facility and how and where it
862 is applied.
863 (h) Project costs and the total amount of debt financing
864 required, marketing projections, resident fees and charges, the
865 competition, resident contract provisions, and other factors
866 that affect the feasibility of the facility.
867 (i) Appropriate population projections, including morbidity
868 and mortality assumptions.
869 (j) The name of the person who prepared the feasibility
870 study and the experience of such person in preparing similar

studies or otherwise consulting in the field of continuing care. The preparer of the feasibility study may be the provider or a contracted third party.

(k) Any other information that the applicant deems relevant and appropriate to enable the office to make a more informed determination.

(7) ~~(6)~~ Within 45 days after the date an application is deemed complete as set forth in paragraph (6)(b) ~~(5)(b)~~, the office shall complete its review and issue a provisional certificate of authority to the applicant based upon its review and a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If the application is denied, the office shall notify the applicant in writing, citing the specific failures to meet the provisions of this chapter. Such denial entitles the applicant to a hearing pursuant to chapter 120.

(9) ~~(8)~~ The office may ~~shall~~ not approve any application that ~~which~~ includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

Section 8. Subsections (1) through (4), paragraph (b) of subsection (5), and subsections (6), (8), and (9) of section

651.023, Florida Statutes, are amended to read:

651.023 Certificate of authority; application.—

(1) After issuance of a provisional certificate of authority, the office shall issue to the holder of such provisional certificate a certificate of authority if the holder of the provisional certificate provides the office with the following information:

(a) Any material change in status with respect to the information required to be filed under s. 651.022(2) in the application for the provisional certificate.

(b) A feasibility study prepared by an independent consultant which contains all of the information required by s. 651.022(4) ~~s. 651.022(3)~~ and financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies or continuing care retirement communities adopted by the Actuarial Standards Board.

~~1. The study must also contain an independent evaluation and examination opinion, or a comparable opinion acceptable to the office, by the consultant who prepared the study, of the underlying assumptions used as a basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.~~

1. ~~2.~~ The study must take into account project costs, actual marketing results to date and marketing projections, resident fees and charges, competition, resident contract provisions, and any other factors which affect the feasibility of operating the facility.

2. ~~3.~~ If the study is prepared by an independent certified

929 public accountant, it must contain an examination opinion, or a
930 compilation report acceptable to the office, containing a
931 financial forecast or projections for the first 5 ~~3~~ years of
932 operations which take into account an actuary's mortality and
933 morbidity assumptions as the study relates to turnover, rates,
934 fees, and charges ~~and financial projections having a compilation~~
935 ~~opinion for the next 3 years~~. If the study is prepared by an
936 independent consulting actuary, it must contain mortality and
937 morbidity assumptions as the study relates to turnover, rates,
938 fees, and charges, ~~data~~ and an actuary's signed opinion that the
939 project as proposed is feasible and that the study has been
940 prepared in accordance with standards adopted by the American
941 Academy of Actuaries.
942 (c) Subject to subsection (4), a provider may submit an
943 application for a certificate of authority and any required
944 exhibits upon submission of documents evidencing ~~proof~~ that the
945 project has a minimum of 30 percent of the units reserved for
946 which the provider is charging an entrance fee. ~~This does not~~
947 ~~apply to an application for a certificate of authority for the~~
948 ~~acquisition of a facility for which a certificate of authority~~
949 ~~was issued before October 1, 1983, to a provider who~~
950 ~~subsequently becomes a debtor in a case under the United States~~
951 ~~Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or to a provider for~~
952 ~~which the department has been appointed receiver pursuant to~~
953 ~~part II of chapter 631.~~
954 (d) Documents evidencing ~~Proof~~ that commitments have been
955 secured for both construction financing and long-term financing
956 or a documented plan acceptable to the office has been adopted
957 by the applicant for long-term financing.

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958 (e) Documents evidencing ~~Proof~~ that all conditions of the
959 lender have been satisfied to activate the commitment to
960 disburse funds other than the obtaining of the certificate of
961 authority, the completion of construction, or the closing of the
962 purchase of realty or buildings for the facility.
963 (f) Documents evidencing ~~Proof~~ that the aggregate amount of
964 entrance fees received by or pledged to the applicant, plus
965 anticipated proceeds from any long-term financing commitment,
966 plus funds from all other sources in the actual possession of
967 the applicant, equal at least 100 percent of the aggregate cost
968 of constructing or purchasing, equipping, and furnishing the
969 facility plus 100 percent of the anticipated startup losses of
970 the facility.
971 (g) A complete audited financial report ~~statements~~ of the
972 applicant, prepared by an independent certified public
973 accountant in accordance with generally accepted accounting
974 principles, as of the date the applicant commenced business
975 operations or for the fiscal year that ended immediately
976 preceding the date of application, whichever is later, and
977 complete unaudited quarterly financial statements attested to by
978 the applicant after the date of the last audit.
979 (h) Documents evidencing ~~Proof~~ that the applicant has
980 complied with the escrow requirements of subsection (5) or
981 subsection (7) and will be able to comply with s. 651.035.
982 (i) Such other reasonable data, financial statements, and
983 pertinent information as the commission or office may require
984 with respect to the applicant or the facility, to determine the
985 financial status of the facility and the management capabilities
986 of its managers and owners.

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

If any material change occurs in the facts set forth in an application filed with the office pursuant to this subsection, an amendment setting forth such change must be filed with the office within 10 business days, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(2) Within 30 days after receipt of the information required under subsection (1), the office shall examine such information and notify the provider in writing, specifically requesting any additional information the office is permitted by law to require. Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received, and the application is deemed to be complete as of the date of the notice. Failure to notify the provider in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application is deemed complete for purposes of review on the date of filing all of the required additional information ~~Within 15 days after receipt of all of the requested additional information, the office shall notify the provider in writing that all of the requested information has been received and the application is deemed to be complete as of the date of the notice. Failure to notify the applicant in writing within the 15-day period constitutes acknowledgment by the office that it has received all requested additional information, and the application shall be deemed complete for purposes of review on the date of filing all of the required additional information~~.

(3) Within 45 days after an application is deemed complete as set forth in subsection (2), and upon completion of the remaining requirements of this section, the office shall complete its review and issue or deny a certificate of authority to the holder of a provisional certificate of authority. If a certificate of authority is denied, the office must notify the holder of the provisional certificate in writing, citing the specific failures to satisfy the provisions of this chapter. The period for review by the office may not be tolled if the office requests additional information and the applicant provides the requested information within 5 business days. If denied, the holder of the provisional certificate is entitled to an administrative hearing pursuant to chapter 120.

(4) The office shall issue a certificate of authority upon determining that the applicant meets all requirements of law and has submitted all of the information required by this section, that all escrow requirements have been satisfied, and that the fees prescribed in s. 651.015(2) have been paid.

(a) A ~~Notwithstanding satisfaction of the 30-percent minimum reservation requirement of paragraph (1)(c), no~~ certificate of authority may not ~~shall~~ be issued until documentation evidencing that the project has a minimum of 50 percent of the units reserved for which the provider is charging an entrance fee~~, and proof~~ is provided to the office. If a provider offering continuing care at-home is applying for a certificate of authority ~~or approval of an expansion pursuant to s. 651.021(2)~~, the same minimum reservation requirements must be met for the continuing care and continuing care at-home contracts, independently of each other.

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1045 (b) In order for a unit to be considered reserved under
1046 this section, the provider must collect a minimum deposit of the
1047 lesser of $40,000 or 10 percent of the then-current entrance fee
1048 for that unit, and may assess a forfeiture penalty of 2 percent
1049 of the entrance fee due to termination of the reservation
1050 contract after 30 days for any reason other than the death or
1051 serious illness of the resident, the failure of the provider to
1052 meet its obligations under the reservation contract, or other
1053 circumstances beyond the control of the resident that equitably
1054 entitle the resident to a refund of the resident's deposit. The
1055 reservation contract must state the cancellation policy and the
1056 terms of the continuing care or continuing care at-home contract
1057 to be entered into.
1058 (5) Up to 25 percent of the moneys paid for all or any part
1059 of an initial entrance fee may be included or pledged for the
1060 construction or purchase of the facility or as security for
1061 long-term financing. The term "initial entrance fee" means the
1062 total entrance fee charged by the facility to the first occupant
1063 of a unit.
1064 (b) For an expansion as provided in s. 651.0246 ~~s.~~
1065 ~~651.021(2)~~, a minimum of 75 percent of the moneys paid for all
1066 or any part of an initial entrance fee collected for continuing
1067 care and 50 percent of the moneys paid for all or any part of an
1068 initial fee collected for continuing care at-home shall be
1069 placed in an escrow account or on deposit with the department as
1070 prescribed in s. 651.033.
1071 (6) The provider is entitled to secure release of the
1072 moneys held in escrow within 7 days after receipt by the office
1073 of an affidavit from the provider, along with appropriate copies

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1074 to verify, and notification to the escrow agent by certified
1075 mail, that the following conditions have been satisfied:
1076 (a) A certificate of occupancy has been issued.
1077 (b) Payment in full has been received for at least 70
1078 percent of the total units of a phase or of the total of the
1079 combined phases constructed. If a provider offering continuing
1080 care at-home is applying for a release of escrowed entrance
1081 fees, the same minimum requirement must be met for the
1082 continuing care and continuing care at-home contracts,
1083 independently of each other.
1084 ~~(c) The consultant who prepared the feasibility study~~
1085 ~~required by this section or a substitute approved by the office~~
1086 ~~certifies within 12 months before the date of filing for office~~
1087 ~~approval that there has been no material adverse change in~~
1088 ~~status with regard to the feasibility study. If a material~~
1089 ~~adverse change exists at the time of submission, sufficient~~
1090 ~~information acceptable to the office and the feasibility~~
1091 ~~consultant must be submitted which remedies the adverse~~
1092 ~~condition.~~
1093 (c) ~~(d)~~ Documents evidencing ~~Proof~~ that commitments have
1094 been secured or a documented plan adopted by the applicant has
1095 been approved by the office for long-term financing.
1096 (d) ~~(e)~~ Documents evidencing ~~Proof~~ that the provider has
1097 sufficient funds to meet the requirements of s. 651.035, which
1098 may include funds deposited in the initial entrance fee account.
1099 (e) ~~(f)~~ Documents evidencing ~~Proof as to~~ the intended
1100 application of the proceeds upon release and documentation ~~proof~~
1101 that the entrance fees when released will be applied as
1102 represented to the office.

(f) If any material change occurred in the facts set forth in the application filed with the office pursuant to subsection (1), the applicant timely filed the amendment setting forth such change with the office and sent copies of the amendment to the principal office of the facility and to the principal office of the controlling company as required under that subsection.

Notwithstanding chapter 120, no person, other than the provider, the escrow agent, and the office, may have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter regarding release of escrow funds.

(8) ~~The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2).~~ The office may not issue a certificate of authority to a facility that does not have a component that is to be licensed pursuant to part II of chapter 400 or to part I of chapter 429 or that does not offer personal services or nursing services through written contractual agreement. A written contractual agreement must be disclosed in the contract for continuing care or continuing care at-home and is subject to ~~the provisions of~~ s. 651.1151, relating to administrative, vendor, and management contracts.

(9) The office may not approve an application that includes in the plan of financing any encumbrance of the operating reserves or renewal and replacement reserves required by this chapter.

Section 9. Section 651.024, Florida Statutes, is amended to read:

651.024 Acquisition.—

(1) A person who seeks to assume the role of general partner of a provider or otherwise assume ownership or possession of, or control over, 10 percent or more of a provider's assets, based on the balance sheet from the most recent financial audit filed with the office, is ~~issued a certificate of authority to operate a continuing care facility or a provisional certificate of authority shall be~~ subject to ~~the provisions of~~ s. 628.4615 and is not required to make filings pursuant to s. 651.022, s. 651.023, or s. 651.0245.

(2) A person who seeks to acquire and become the provider for a facility is subject to s. 651.0245 and is not required to make filings pursuant to ss. 628.4615, 651.022, and 651.023.

(3) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the provider or facility, as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the provider or facility is relieved of any duty to register or report under this section which may arise out of the provider's or facility's relationship with the person, unless the office disallows the disclaimer.

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

(a) "Controlling company" means any corporation, trust, or association that directly or indirectly owns 25 percent or more

1161 of the voting securities of one or more facilities that are
1162 stock corporations, or 25 percent or more of the ownership
1163 interest of one or more facilities that are not stock
1164 corporations.
1165 (b) "Natural person" means an individual.
1166 (c) "Person" includes a natural person, corporation,
1167 association, trust, general partnership, limited partnership,
1168 joint venture, firm, proprietorship, or any other entity that
1169 may hold a license or certificate as a facility.
1170 (5) In addition to the facility or the controlling company,
1171 the office has standing to petition a circuit court as described
1172 in s. 628.4615(9).
1173 Section 10. Section 651.0245, Florida Statutes, is created
1174 to read:
1175 651.0245 Application for the simultaneous acquisition of a
1176 facility and issuance of a certificate of authority.—
1177 (1) Except with the prior written approval of the office, a
1178 person may not, individually or in conjunction with any
1179 affiliated person of such person, directly or indirectly acquire
1180 a facility operating under a subsisting certificate of authority
1181 and engage in the business of providing continuing care.
1182 (2) An applicant seeking simultaneous acquisition of a
1183 facility and issuance of a certificate of authority must:
1184 (a) Comply with the notice requirements of s.
1185 628.4615(2)(a); and
1186 (b) File an application in the form required by the office
1187 and cooperate with the office's review of the application.
1188 (3) The commission shall adopt by rule application
1189 requirements equivalent to those described in ss. 628.4615(4)

1190 and (5), 651.022(2)(a)-(g), and 651.023(1)(b). The office shall
1191 review the application and issue an approval or disapproval of
1192 the filing in accordance with ss. 628.4615(6)(a) and (c), (7)-
1193 (10), and (14); 651.022(9); and 651.023(1)(b).
1194 (4) As used in this section, the term:
1195 (a) "Controlling company" means any corporation, trust, or
1196 association that directly or indirectly owns 25 percent or more
1197 of the voting securities of one or more facilities that are
1198 stock corporations, or 25 percent or more of the ownership
1199 interest of one or more facilities that are not stock
1200 corporations.
1201 (b) "Natural person" means an individual.
1202 (c) "Person" includes a natural person, corporation,
1203 association, trust, general partnership, limited partnership,
1204 joint venture, firm, proprietorship, or any other entity that
1205 may hold a license or certificate as a facility.
1206 (5) In addition to the facility or the controlling company,
1207 the office has standing to petition a circuit court as described
1208 in s. 628.4615(9).
1209 (6) A person may rebut a presumption of control by filing a
1210 disclaimer of control with the office on a form prescribed by
1211 the commission. The disclaimer must fully disclose all material
1212 relationships and bases for affiliation between the person and
1213 the provider or facility, as well as the basis for disclaiming
1214 the affiliation. In lieu of such form, a person or acquiring
1215 party may file with the office a copy of a Schedule 13G filed
1216 with the Securities and Exchange Commission pursuant to Rule
1217 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities
1218 Exchange Act of 1934, as amended. After a disclaimer has been

1219 filed, the provider or facility is relieved of any duty to
1220 register or report under this section which may arise out of the
1221 provider's or facility's relationship with the person, unless
1222 the office disallows the disclaimer.
1223 (7) The commission may adopt, amend, or repeal rules as
1224 necessary to administer this section.
1225 Section 11. Section 651.0246, Florida Statutes, is created
1226 to read:
1227 651.0246 Expansions.—
1228 (1)(a) A provider must obtain written approval from the
1229 office before commencing construction or marketing for an
1230 expansion of a certificated facility equivalent to the addition
1231 of at least 20 percent of existing units or 20 percent or more
1232 in the number of continuing care at-home contracts. If the
1233 provider has exceeded the current statewide median for days cash
1234 on hand, debt service coverage ratio, and total campus occupancy
1235 for two consecutive annual reporting periods, the provider is
1236 automatically granted approval to expand the total number of
1237 existing units by up to 35 percent upon submitting a letter to
1238 the office indicating the total number of planned units in the
1239 expansion, the proposed sources and uses of funds, and an
1240 attestation that the provider understands and pledges to comply
1241 with all minimum liquid reserve and escrow account requirements.
1242 As used in this section, the term "existing units" means the sum
1243 of the total number of independent living units and assisted
1244 living units identified in the most recent annual report filed
1245 with the office pursuant to s. 651.026. For purposes of this
1246 section, the statewide median for days cash on hand, debt
1247 service coverage ratio, and total campus occupancy is the median

1248 calculated in the most recent annual report submitted by the
1249 office to the Continuing Care Advisory Council pursuant to s.
1250 651.121(8). This section does not apply to construction for
1251 which a certificate of need from the Agency for Health Care
1252 Administration is required.
1253 (b) The application for such approval must be on forms
1254 adopted by the commission and provided by the office. The
1255 application must include the feasibility study required by this
1256 section and such other information as reasonably requested by
1257 the office. If the expansion is only for continuing care at-home
1258 contracts, an actuarial study prepared by an independent actuary
1259 in accordance with standards adopted by the American Academy of
1260 Actuaries which presents the financial impact of the expansion
1261 may be substituted for the feasibility study.
1262 (c) In determining whether an expansion should be approved,
1263 the office shall consider:
1264 1. Whether the application meets all requirements of law;
1265 2. Whether the feasibility study was based on sufficient
1266 data and reasonable assumptions; and
1267 3. Whether the applicant will be able to provide continuing
1268 care or continuing care at-home as proposed and meet all
1269 financial obligations related to its operations, including the
1270 financial requirements of this chapter.
1271
1272 If the application is denied, the office must notify the
1273 applicant in writing, citing the specific failures to meet the
1274 provisions of this chapter. A denial entitles the applicant to a
1275 hearing pursuant to chapter 120.
1276 (2) A provider applying for expansion of a certificated

1277 facility must submit all of the following:
1278 (a) A feasibility study prepared by an independent
1279 certified public accountant. The feasibility study must include
1280 at least the following information:
1281 1. A description of the facility and proposed expansion,
1282 including the location, size, anticipated completion date, and
1283 the proposed construction program.
1284 2. An identification and evaluation of the primary and, if
1285 applicable, secondary market areas of the facility and the
1286 projected unit sales per month.
1287 3. Projected revenues, including anticipated entrance fees;
1288 monthly service fees; nursing care rates, if applicable; and all
1289 other sources of revenue.
1290 4. Projected expenses, including for staffing requirements
1291 and salaries; the cost of property, plant, and equipment,
1292 including depreciation expense; interest expense; marketing
1293 expense; and other operating expenses.
1294 5. A projected balance sheet of the applicant.
1295 6. Expectations of the financial condition of the project,
1296 including the projected cash flow and an estimate of the funds
1297 anticipated to be necessary to cover startup losses.
1298 7. The inflation factor, if any, assumed in the study for
1299 the proposed expansion and how and where it is applied.
1300 8. Project costs, the total amount of debt financing
1301 required, marketing projections, resident fees and charges, the
1302 competition, resident contract provisions, and other factors
1303 that affect the feasibility of the facility.
1304 9. Appropriate population projections, including morbidity
1305 and mortality assumptions.

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1306 10. The name of the person who prepared the feasibility
1307 study and his or her experience in preparing similar studies or
1308 otherwise consulting in the field of continuing care.
1309 11. Financial forecasts or projections prepared in
1310 accordance with standards adopted by the American Institute of
1311 Certified Public Accountants or in accordance with standards for
1312 feasibility studies for continuing care retirement communities
1313 adopted by the Actuarial Standards Board.
1314 12. An independent evaluation and examination opinion for
1315 the first 5 years of operations, or a comparable opinion
1316 acceptable to the office, by the consultant who prepared the
1317 study, of the underlying assumptions used as a basis for the
1318 forecasts or projections in the study and that the assumptions
1319 are reasonable and proper and the project as proposed is
1320 feasible.
1321 13. Any other information that the provider deems relevant
1322 and appropriate to provide to enable the office to make a more
1323 informed determination.
1324 (b) Such other reasonable data, financial statements, and
1325 pertinent information as the commission or office may require
1326 with respect to the applicant or the facility to determine the
1327 financial status of the facility and the management capabilities
1328 of its managers and owners.
1329 (3) A minimum of 75 percent of the moneys paid for all or
1330 any part of an initial entrance fee or reservation deposit
1331 collected for continuing care and 50 percent of the moneys paid
1332 for all or any part of an initial fee collected for continuing
1333 care at-home must be placed in an escrow account or on deposit
1334 with the department as prescribed in s. 651.033. Up to 25

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1335 percent of the moneys paid for all or any part of an initial
1336 entrance fee or reservation deposit may be included or pledged
1337 for the construction or purchase of the facility or as security
1338 for long-term financing. As used in this section, the term
1339 "initial entrance fee" means the total entrance fee charged by
1340 the facility to the first occupant of a unit.
1341
1342 Entrance fees and reservation deposits collected for expansions
1343 must be held pursuant to the escrow requirements of s.
1344 651.023(5) and (6).
1345 (4) The provider is entitled to secure release of the
1346 moneys held in escrow within 7 days after receipt by the office
1347 of an affidavit from the provider, along with appropriate copies
1348 to verify, and notification to the escrow agent by certified
1349 mail that the following conditions have been satisfied:
1350 (a) A certificate of occupancy has been issued.
1351 (b) Payment in full has been received for at least 50
1352 percent of the total units of a phase or of the total of the
1353 combined phases constructed. If a provider offering continuing
1354 care at-home is applying for a release of escrowed entrance
1355 fees, the same minimum requirement must be met for the
1356 continuing care and continuing care at-home contracts
1357 independently of each other.
1358 (c) Documents evidencing that commitments have been secured
1359 or that a documented plan adopted by the applicant has been
1360 approved by the office for long-term financing.
1361 (d) Documents evidencing that the provider has sufficient
1362 funds to meet the requirements of s. 651.035, which may include
1363 funds deposited in the initial entrance fee account.

1364 (e) Documents evidencing the intended application of the
1365 proceeds upon release and documentation that the entrance fees,
1366 when released, will be applied as represented to the office.
1367
1368 Notwithstanding chapter 120, only the provider, the escrow
1369 agent, and the office have a substantial interest in any office
1370 decision regarding release of escrow funds in any proceedings
1371 under chapter 120 or this chapter.
1372 (5)(a) Within 30 days after receipt of an application for
1373 expansion, the office shall examine the application and shall
1374 notify the applicant in writing, specifically setting forth and
1375 specifically requesting any additional information that the
1376 office is authorized to require. Within 15 days after the office
1377 receives all the requested additional information, the office
1378 shall notify the applicant in writing that the requested
1379 information has been received and that the application is deemed
1380 to be complete as of the date of the notice. If the office
1381 chooses not to notify the applicant within the 15-day period,
1382 then the application is deemed complete for purposes of review
1383 on the date the applicant files the additional requested
1384 information. If the application submitted is determined by the
1385 office to be substantially incomplete so as to require
1386 substantial additional information, including biographical
1387 information, the office may return the application to the
1388 applicant with a written notice that the application as received
1389 is substantially incomplete and therefore unacceptable for
1390 filing without further action required by the office. Any filing
1391 fee received must be refunded to the applicant.
1392 (b) An application is deemed complete upon the office

1393 receiving all requested information and the applicant correcting
1394 any error or omission of which the applicant was timely notified
1395 or when the time for such notification has expired. The office
1396 shall notify the applicant in writing of the date on which the
1397 application was deemed complete.
1398 (6) Within 45 days after the date on which an application
1399 is deemed complete as set forth in paragraph (5)(b), the office
1400 shall complete its review and, based upon its review, approve an
1401 expansion by the applicant and issue a determination that the
1402 application meets all requirements of law, that the feasibility
1403 study was based on sufficient data and reasonable assumptions,
1404 and that the applicant will be able to provide continuing care
1405 or continuing care at-home as proposed and meet all financial
1406 and contractual obligations related to its operations, including
1407 the financial requirements of this chapter. The period for
1408 review by the office may not be tolled if the office requests
1409 additional information and the applicant provides information
1410 acceptable to the office within 5 business days. If the
1411 application is denied, the office must notify the applicant in
1412 writing, citing the specific failures to meet the provisions of
1413 this chapter. The denial entitles the applicant to a hearing
1414 pursuant to chapter 120.
1415 Section 12. Paragraph (c) of subsection (2) and subsection
1416 (3) of section 651.026, Florida Statutes, are amended,
1417 subsection (10) is added to that section, and paragraph (a) of
1418 subsection (2) of that section is republished, to read:
1419 651.026 Annual reports.—
1420 (2) The annual report shall be in such form as the
1421 commission prescribes and shall contain at least the following:

1422 (a) Any change in status with respect to the information
1423 required to be filed under s. 651.022(2).
1424 (c) The following financial information:
1425 1. A detailed listing of the assets maintained in the
1426 liquid reserve as required under s. 651.035 and in accordance
1427 with part II of chapter 625;
1428 2. A schedule giving additional information relating to
1429 property, plant, and equipment having an original cost of at
1430 least $25,000, so as to show in reasonable detail with respect
1431 to each separate facility original costs, accumulated
1432 depreciation, net book value, appraised value or insurable value
1433 and date thereof, insurance coverage, encumbrances, and net
1434 equity of appraised or insured value over encumbrances. Any
1435 property not used in continuing care must be shown separately
1436 from property used in continuing care;
1437 3. The level of participation in Medicare or Medicaid
1438 programs, or both;
1439 4. A statement of all fees required of residents,
1440 including, but not limited to, a statement of the entrance fee
1441 charged, the monthly service charges, the proposed application
1442 of the proceeds of the entrance fee by the provider, and the
1443 plan by which the amount of the entrance fee is determined if
1444 the entrance fee is not the same in all cases; and
1445 5. Any change or increase in fees if the provider changes
1446 the scope of, or the rates for, care or services, regardless of
1447 whether the change involves the basic rate or only those
1448 services available at additional costs to the resident.
1449 6. If the provider has more than one certificated facility,
1450 or has operations that are not licensed under this chapter, it

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1451 shall submit a balance sheet, statement of income and expenses,
1452 statement of equity or fund balances, and statement of cash
1453 flows for each facility licensed under this chapter as
1454 supplemental information to the audited financial report
1455 statements required under paragraph (b).
1456 7. The management's calculation of the provider's debt
1457 service coverage ratio and days cash on hand for the current
1458 reporting period, and an opinion from an independent certified
1459 public accountant of the management's calculations.
1460 (3) The commission shall adopt by rule additional
1461 meaningful measures of assessing the financial viability of a
1462 provider. The rule may include the following factors:
1463 (a) Debt service coverage ratios.
1464 (b) Current ratios.
1465 (c) Adjusted current ratios.
1466 (d) Cash flows.
1467 (e) Occupancy rates.
1468 (f) Other measures, ratios, or trends.
1469 (g) Other factors as may be appropriate.
1470 (10) Within 90 days after the conclusion of each annual
1471 reporting period, the office shall publish an industry
1472 benchmarking report that contains all of the following:
1473 (a) The median days cash on hand for all providers.
1474 (b) The median debt service coverage ratio for all
1475 providers.
1476 (c) The median occupancy rate for all providers by setting,
1477 including independent living, assisted living, skilled nursing,
1478 and the entire campus.
1479 Section 13. Section 651.0261, Florida Statutes, is amended

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1480 to read:
1481 651.0261 Quarterly and monthly statements.—
1482 (1) Within 45 days after the end of each fiscal quarter,
1483 each provider shall file a quarterly unaudited financial
1484 statement of the provider or of the facility in the form
1485 prescribed by rule of the commission and a detailed listing of
1486 the assets maintained in the liquid reserve as required under s.
1487 651.035. This requirement may be waived by the office upon
1488 written request from a provider that is accredited or that has
1489 obtained an investment grade credit rating from a United States
1490 credit rating agency as authorized under s. 651.028. The last
1491 quarterly statement for a fiscal year is not required if a
1492 provider does not have pending a regulatory action level event
1493 or corrective action plan.
1494 (2) If the office finds, pursuant to rules of the
1495 commission, that such information is needed to properly monitor
1496 the financial condition of a provider or facility or is
1497 otherwise needed to protect the public interest, the office may
1498 require the provider to file:
1499 (a) Within 25 days after the end of each month, a monthly
1500 unaudited financial statement of the provider or of the facility
1501 in the form prescribed by the commission by rule and a detailed
1502 listing of the assets maintained in the liquid reserve as
1503 required under s. 651.035, within 45 days after the end of each
1504 fiscal quarter, a quarterly unaudited financial statement of the
1505 provider or of the facility in the form prescribed by the
1506 commission by rule. The commission may by rule require all or
1507 part of the statements or filings required under this section to
1508 be submitted by electronic means in a computer-readable form

~~compatible with the electronic data format specified by the commission~~.

(b) Such other data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, or its directors, trustees, members, branches, subsidiaries, or affiliates, to determine the financial status of the provider or of the facility and the management capabilities of its managers and owners.

(3) A filing under subsection (2) may be required if any of the following apply:

(a) The facility has been operational for less than 2 years.

(b) The provider is:

1. Subject to administrative supervision proceedings;

2. Subject to a corrective action plan resulting from a regulatory action level event for up to 2 years after the factors that caused the regulatory action level event have been corrected; or

3. Subject to delinquency or receivership proceedings.

(c) The provider or facility displays a declining financial position.

(d) A change of ownership of the provider or facility has occurred within the previous 2 years.

(e) The facility is deemed to be impaired.

(4) The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with an electronic data format specified by the

commission.

Section 14. Section 651.028, Florida Statutes, is amended to read:

651.028 Accredited or certain credit-rated facilities.—If a provider or obligated group is accredited without stipulations or conditions by a process found by the office to be acceptable and substantially equivalent to the provisions of this chapter or has obtained an investment grade credit rating from a nationally recognized credit rating agency, as applicable, from Moody's Investors Service, Standard & Poor's, or Fitch Ratings, the office may, pursuant to rule of the commission, waive any requirements of this chapter with respect to the provider if the office finds that such waivers are not inconsistent with the security protections intended by this chapter.

Section 15. Paragraphs (a), (c), and (d) of subsection (1) and subsections (2) and (3) of section 651.033, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.022, s. 651.023, s. 651.035, or s. 651.055:

(a) The escrow account must ~~shall~~ be established in a Florida bank, Florida savings and loan association, ~~or~~ Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury and that has either a branch or a license to operate in this state which is acceptable to the office, or such funds must be deposited ~~on~~

1567 ~~deposit~~ with the department~~,~~ and ~~the funds deposited therein~~
1568 ~~shall~~ be kept and maintained in an account separate and apart
1569 from the provider's business accounts.
1570 (c) Any agreement establishing an escrow account required
1571 under ~~the provisions of~~ this chapter is ~~shall be~~ subject to
1572 approval by the office. The agreement must ~~shall~~ be in writing
1573 and ~~shall~~ contain, in addition to any other provisions required
1574 by law, a provision whereby the escrow agent agrees to abide by
1575 the duties imposed by paragraphs (b) and (e), (3)(a), (3)(b),
1576 and (5)(a) and subsection (6) ~~under this section~~.
1577 (d) All funds deposited in an escrow account, if invested,
1578 must ~~shall~~ be invested in cash, cash equivalents, mutual funds,
1579 equities, or investment grade bonds ~~as set forth in part II of~~
1580 ~~chapter 625~~; however, such investment may not diminish the funds
1581 held in escrow below the amount required by this chapter. Funds
1582 deposited in an escrow account are not subject to charges by the
1583 escrow agent except escrow agent fees associated with
1584 administering the accounts, or subject to any liens, judgments,
1585 garnishments, creditor's claims, or other encumbrances against
1586 the provider or facility except as provided in s. 651.035(1).
1587 (2) Notwithstanding s. 651.035(7), ~~In addition, the escrow~~
1588 ~~agreement shall provide that the escrow agent or another person~~
1589 ~~designated to act in the escrow agent's place and the provider,~~
1590 ~~except as otherwise provided in s. 651.035, shall notify the~~
1591 ~~office in writing at least 10 days before the withdrawal of any~~
1592 ~~portion of any funds required to be escrowed under the~~
1593 ~~provisions of s. 651.035. However,~~ in the event of an emergency
1594 and upon petition by the provider, the office may ~~waive the 10-~~
1595 ~~day notification period and~~ allow a withdrawal of up to 10

1596 percent of the required minimum liquid reserve. The office shall
1597 have 3 working days to deny the petition for the emergency 10-
1598 percent withdrawal. If the office fails to deny the petition
1599 within 3 working days, the petition is ~~shall be~~ deemed to have
1600 been granted by the office. For purposes ~~the purpose~~ of this
1601 section, "working day" means each day that is not a Saturday,
1602 Sunday, or legal holiday as defined by Florida law. Also, for
1603 purposes ~~the purpose~~ of this section, the day the petition is
1604 received by the office is ~~shall~~ not ~~be~~ counted as one of the 3
1605 days.
1606 (3) ~~In addition,~~ When entrance fees are required to be
1607 deposited in an escrow account pursuant to s. 651.022, s.
1608 651.023, or s. 651.055:
1609 (a) The provider shall deliver to the resident a written
1610 receipt. The receipt must show the payor's name and address, the
1611 date, the price of the care contract, and the amount of money
1612 paid. A copy of each receipt, together with the funds, must
1613 ~~shall~~ be deposited with the escrow agent or as provided in
1614 paragraph (c). The escrow agent must ~~shall~~ release such funds to
1615 the provider 7 days after the date of receipt of the funds by
1616 the escrow agent if the provider, operating under a certificate
1617 of authority issued by the office, has met the requirements of
1618 s. 651.023(6). However, if the resident rescinds the contract
1619 within the 7-day period, the escrow agent must ~~shall~~ release the
1620 escrowed fees to the resident.
1621 (b) At the request of an individual resident of a facility,
1622 the escrow agent shall issue a statement indicating the status
1623 of the resident's portion of the escrow account.
1624 (c) At the request of an individual resident of a facility,

the provider may hold the check for the 7-day period and may ~~shall~~ not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check must ~~shall~~ be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

(d) A provider may assess a nonrefundable fee, which is separate from the entrance fee, for processing a prospective resident's application for continuing care or continuing care at-home.

(6) Except as described in paragraph (3)(a), the escrow agent may not release or otherwise allow the transfer of funds without the written approval of the office, unless the withdrawal is from funds in excess of the amounts required by ss. 651.022, 651.023, 651.035, and 651.055.

Section 16. Section 651.034, Florida Statutes, is created to read:

651.034 Financial and operating requirements for providers.—

(1)(a) If a regulatory action level event occurs, the office must:

1. Require the provider to prepare and submit a corrective action plan or, if applicable, a revised corrective action plan;

2. Perform an examination pursuant to s. 651.105 or an analysis, as the office considers necessary, of the assets, liabilities, and operations of the provider, including a review of the corrective action plan or the revised corrective action plan; and

3. After the examination or analysis, issue a corrective order specifying any corrective actions that the office

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determines are required.

(b) In determining corrective actions, the office shall consider any factor relevant to the provider based upon the office's examination or analysis of the assets, liabilities, and operations of the provider. The provider must submit the corrective action plan or the revised corrective action plan within 30 days after the occurrence of the regulatory action level event. The office shall review and approve or disapprove the corrective action plan within 15 business days.

(c) The office may use members of the Continuing Care Advisory Council, individually or as a group, or may retain actuaries, investment experts, and other consultants to review a provider's corrective action plan or revised corrective action plan, examine or analyze the assets, liabilities, and operations of a provider, and formulate the corrective order with respect to the provider. The fees, costs, and expenses relating to consultants must be borne by the affected provider.

(2) If an impairment occurs, the office must take any action necessary to place the provider under regulatory control, including any remedy available under chapter 631. An impairment is sufficient grounds for the department to be appointed as receiver as provided in chapter 631. Notwithstanding s. 631.011, impairment of a provider, for purposes of s. 631.051, is defined according to the term "impaired" under s. 651.011. The office may forego taking action for up to 180 days after the impairment if the office finds there is a reasonable expectation that the impairment may be eliminated within the 180-day period.

(3) There is no liability on the part of, and a cause of action may not arise against, the commission, department, or

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1683 office, or their employees or agents, for any action they take
1684 in the performance of their powers and duties under this
1685 section.
1686 (4) The office shall transmit any notice that may result in
1687 regulatory action by registered mail, certified mail, or any
1688 other method of transmission which includes documentation of
1689 receipt by the provider. Notice is effective when the provider
1690 receives it.
1691 (5) This section is supplemental to the other laws of this
1692 state and does not preclude or limit any power or duty of the
1693 department or office under those laws or under the rules adopted
1694 pursuant to those laws.
1695 (6) The office may exempt a provider from subsection (1) or
1696 subsection (2) until stabilized occupancy is reached or until
1697 the time projected to achieve stabilized occupancy as reported
1698 in the last feasibility study required by the office as part of
1699 an application filing under s. 651.023, s. 651.024, s. 651.0245,
1700 or s. 651.0246 has elapsed, but for no longer than 5 years from
1701 the date of issuance of the certificate of occupancy.
1702 (7) The commission may adopt rules to administer this
1703 section, including, but not limited to, rules regarding
1704 corrective action plans, revised corrective action plans,
1705 corrective orders, and procedures to be followed in the event of
1706 a regulatory action level event or an impairment.
1707 Section 17. Paragraphs (a), (b), and (c) of subsection (1)
1708 of section 651.035, Florida Statutes, are amended, and
1709 subsections (7) through (10) are added to that section, to read:
1710 651.035 Minimum liquid reserve requirements.—
1711 (1) A provider shall maintain in escrow a minimum liquid

1712 reserve consisting of the following reserves, as applicable:
1713 (a) Each provider shall maintain in escrow as a debt
1714 service reserve the aggregate amount of all principal and
1715 interest payments due during the fiscal year on any mortgage
1716 loan or other long-term financing of the facility, including
1717 property taxes as recorded in the audited financial report
1718 ~~statements~~ required under s. 651.026. The amount must include
1719 any leasehold payments and all costs related to such payments.
1720 If principal payments are not due during the fiscal year, the
1721 provider must ~~shall~~ maintain in escrow as a minimum liquid
1722 reserve an amount equal to interest payments due during the next
1723 12 months on any mortgage loan or other long-term financing of
1724 the facility, including property taxes. If a provider does not
1725 have a mortgage loan or other financing on the facility, the
1726 provider must deposit monthly in escrow as a minimum liquid
1727 reserve an amount equal to one-twelfth of the annual property
1728 tax liability as indicated in the most recent tax notice
1729 provided pursuant to s. 197.322(3).
1730 (b) A provider that has outstanding indebtedness that
1731 requires a debt service reserve to be held in escrow pursuant to
1732 a trust indenture or mortgage lien on the facility and for which
1733 the debt service reserve may only be used to pay principal and
1734 interest payments on the debt that the debtor is obligated to
1735 pay, and which may include property taxes and insurance, may
1736 include such debt service reserve in computing the minimum
1737 liquid reserve needed to satisfy this subsection if the provider
1738 furnishes to the office a copy of the agreement under which such
1739 debt service is held, together with a statement of the amount
1740 being held in escrow for the debt service reserve, certified by

1741 the lender or trustee and the provider to be correct. The
1742 trustee shall provide the office with any information concerning
1743 the debt service reserve account upon request of the provider or
1744 the office. Such separate debt service reserves, if any, are not
1745 subject to the transfer provisions set forth in subsection (8).
1746 (c) Each provider shall maintain in escrow an operating
1747 reserve equal to 30 percent of the total operating expenses
1748 projected in the feasibility study required by s. 651.023 for
1749 the first 12 months of operation. Thereafter, each provider
1750 shall maintain in escrow an operating reserve equal to 15
1751 percent of the total operating expenses in the annual report
1752 filed pursuant to s. 651.026. If a provider has been in
1753 operation for more than 12 months, the total annual operating
1754 expenses must ~~shall~~ be determined by averaging the total annual
1755 operating expenses reported to the office by the number of
1756 annual reports filed with the office within the preceding 3-year
1757 period subject to adjustment if there is a change in the number
1758 of facilities owned. For purposes of this subsection, total
1759 annual operating expenses include all expenses of the facility
1760 except~~:~~ depreciation and amortization; interest and property
1761 taxes included in paragraph (a); extraordinary expenses that are
1762 adequately explained and documented in accordance with generally
1763 accepted accounting principles; liability insurance premiums in
1764 excess of those paid in calendar year 1999; and changes in the
1765 obligation to provide future services to current residents. For
1766 providers initially licensed during or after calendar year 1999,
1767 liability insurance must ~~shall~~ be included in the total
1768 operating expenses in an amount not to exceed the premium paid
1769 during the first 12 months of facility operation. ~~Beginning~~

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1770 ~~January 1, 1993,~~ The operating reserves required under this
1771 subsection must ~~shall~~ be in an unencumbered account held in
1772 escrow for the benefit of the residents. Such funds may not be
1773 encumbered or subject to any liens or charges by the escrow
1774 agent or judgments, garnishments, or creditors' claims against
1775 the provider or facility. However, if a facility had a lien,
1776 mortgage, trust indenture, or similar debt instrument in place
1777 before January 1, 1993, which encumbered all or any part of the
1778 reserves required by this subsection and such funds were used to
1779 meet the requirements of this subsection, then such arrangement
1780 may be continued, unless a refinancing or acquisition has
1781 occurred, and the provider is ~~shall be~~ in compliance with this
1782 subsection.
1783 (7)(a) A provider may withdraw funds held in escrow without
1784 the approval of the office if the amount held in escrow exceeds
1785 the requirements of this section and if the withdrawal will not
1786 affect compliance with this section.
1787 (b)1. For all other proposed withdrawals, in order to
1788 receive the consent of the office, the provider must file
1789 documentation showing why the withdrawal is necessary for the
1790 continued operation of the facility and such additional
1791 information as the office reasonably requires.
1792 2. The office shall notify the provider when the filing is
1793 deemed complete. If the provider has complied with all prior
1794 requests for information, the filing is deemed complete after 30
1795 days without communication from the office.
1796 3. Within 30 days after the date a file is deemed complete,
1797 the office shall provide the provider with written notice of its
1798 approval or disapproval of the request. The office may

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1799 disapprove any request to withdraw such funds if it determines
1800 that the withdrawal is not in the best interest of the
1801 residents.
1802 (8) The office may order the immediate transfer of up to
1803 100 percent of the funds held in the minimum liquid reserve to
1804 the custody of the department pursuant to part III of chapter
1805 625 if the office finds that the provider is impaired or
1806 insolvent. The office may order such a transfer regardless of
1807 whether the office has suspended or revoked, or intends to
1808 suspend or revoke, the certificate of authority of the provider.
1809 (9) Each facility shall file with the office annually,
1810 together with the annual report required by s. 651.026, a
1811 calculation of its minimum liquid reserve, determined in
1812 accordance with this section, on a form prescribed by the
1813 commission. The minimum liquid reserve must be maintained at the
1814 calculated level within 60 days after filing the annual report.
1815 (10) If the balance of the minimum liquid reserve is below
1816 the required amount at the end of any month, the provider must
1817 fund the shortfall in the reserve within 10 business days after
1818 the beginning of the following month. If the balance of the
1819 minimum liquid reserve is not restored to the required amount
1820 within such time, the provider will be deemed out of compliance
1821 with this section.
1822 Section 18. Section 651.043, Florida Statutes, is created
1823 to read:
1824 651.043 Approval of change in management.—
1825 (1) As used in this section, the term "management" means:
1826 (a) A manager or management company; or
1827 (b) A person who exercises or who has the ability to

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1828 exercise effective control of the provider or organization, or
1829 who influences or has the ability to influence the transaction
1830 of the business of the provider.
1831 (2) A contract for management entered into after July 1,
1832 2018, must be in writing and include a provision that the
1833 contract will be canceled upon issuance of an order by the
1834 office pursuant to this section without the application of any
1835 cancellation fee or penalty. If a provider contracts with a
1836 management company, a separate written contract is not required
1837 for the individual manager employed by the management company to
1838 oversee a facility.
1839 (3) A provider must notify the office, in writing or
1840 electronically, of any change in management within 10 business
1841 days. For each new management appointment, the provider must
1842 submit the information required by s. 651.022(2) and a copy of
1843 the written management contract, if applicable.
1844 (4) For a provider that is deemed to be impaired or that
1845 has a regulatory action level event pending, the office may
1846 disapprove new management and order the provider to remove the
1847 new management after reviewing the information required in
1848 subsection (3).
1849 (5) For a provider other than that specified in subsection
1850 (4), the office may disapprove new management and order the
1851 provider to remove the new management after receiving the
1852 required information in subsection (3) if the office:
1853 (a) Finds that the new management is incompetent or
1854 untrustworthy;
1855 (b) Finds that the new management is so lacking in relevant
1856 managerial experience as to make the proposed operation

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1857 hazardous to the residents or potential residents;
1858 (c) Finds that the new management is so lacking in relevant
1859 experience, ability, and standing as to jeopardize the
1860 reasonable promise of successful operation; or
1861 (d) Has good reason to believe that the new management is
1862 affiliated directly or indirectly through ownership, control, or
1863 business relations with any person or persons whose business
1864 operations are or have been marked by manipulation of assets or
1865 accounts or by bad faith, to the detriment of residents,
1866 stockholders, investors, creditors, or the public.
1867
1868 The office shall complete its review as required under
1869 subsections (4) and (5) and, if applicable, issue notice of
1870 disapproval of the new management within 15 business days after
1871 the filing is deemed complete. A filing is deemed complete upon
1872 the office's receipt of all requested information and the
1873 provider's correction of any error or omission for which the
1874 provider was timely notified. If the office does not issue
1875 notice of disapproval of the new management within 15 business
1876 days after the filing is deemed complete, then the new
1877 management is deemed approved.
1878 (6) Management disapproved by the office must be removed
1879 within 30 days after receipt by the provider of notice of such
1880 disapproval.
1881 (7) The office may revoke, suspend, or take other
1882 administrative action against the certificate of authority of
1883 the provider if the provider:
1884 (a) Fails to timely remove management disapproved by the
1885 office;

1886 (b) Fails to timely notify the office of a change in
1887 management;
1888 (c) Appoints new management without a written contract; or
1889 (d) Repeatedly appoints management that was previously
1890 disapproved by the office or that is not approvable pursuant to
1891 subsection (5).
1892 (8) The provider shall remove any management immediately
1893 upon discovery of any of the following conditions, if the
1894 conditions were not disclosed in the notice to the office
1895 required in subsection (3):
1896 (a) That any person who exercises or has the ability to
1897 exercise effective control of the provider, or who influences or
1898 has the ability to influence the transaction of the business of
1899 the provider, has been found guilty of, or has pled guilty or no
1900 contest to, any felony or crime punishable by imprisonment of 1
1901 year or more under the laws of the United States or any state
1902 thereof or under the laws of any other country which involves
1903 moral turpitude, without regard to whether a judgment or
1904 conviction has been entered by the court having jurisdiction in
1905 such case.
1906 (b) That any person who exercises or has the ability to
1907 exercise effective control of the organization, or who
1908 influences or has the ability to influence the transaction of
1909 the business of the provider, is now or was in the past
1910 affiliated, directly or indirectly, through ownership interest
1911 of 10 percent or more in, or control of, any business,
1912 corporation, or other entity that has been found guilty of or
1913 has pled guilty or no contest to any felony or crime punishable
1914 by imprisonment for 1 year or more under the laws of the United

States, any state, or any other country, regardless of adjudication.

The failure to remove such management is grounds for revocation or suspension of the provider’s certificate of authority.

Section 19. Section 651.051, Florida Statutes, is amended to read:

651.051 Maintenance of assets and records in state.—All records and assets of a provider must be maintained in this state, or, if the provider’s corporate office is located in another state, must be electronically stored in a manner that will ensure that the records are readily accessible to the office. No records or assets may be removed from this state by a provider unless the office consents to such removal in writing before such removal. Such consent must ~~shall~~ be based upon the provider’s submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider’s residents in this state. Before ~~Prior to~~ such removal, the provider shall give notice to the president or chair of the facility’s residents’ council. If such removal is part of a cash management system which has been approved by the office, disclosure of the system must ~~shall~~ meet the notification requirements. The electronic storage of records on a web-based, secured storage platform by contract with a third party is acceptable if the records are readily accessible to the office.

Section 20. Subsection (2) of section 651.057, Florida Statutes, is amended to read:

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651.057 Continuing care at-home contracts.—

(2) A provider that holds a certificate of authority and wishes to offer continuing care at-home must also:

(a) Submit a business plan to the office with the following information:

1. A description of the continuing care at-home services that will be provided, the market to be served, and the fees to be charged;

2. A copy of the proposed continuing care at-home contract;

3. An actuarial study prepared by an independent actuary in accordance with the standards adopted by the American Academy of Actuaries which presents the impact of providing continuing care at-home on the overall operation of the facility; and

4. A market feasibility study that meets the requirements of s. 651.022(4) ~~s. 651.022(3)~~ and documents that there is sufficient interest in continuing care at-home contracts to support such a program;

(b) Demonstrate to the office that the proposal to offer continuing care at-home contracts to individuals who do not immediately move into the facility will not place the provider in an unsound financial condition;

(c) Comply with the requirements of s. 651.0246(1) ~~s. 651.021(2)~~, except that an actuarial study may be substituted for the feasibility study; and

(d) Comply with the requirements of this chapter.

Section 21. Subsection (1) of section 651.071, Florida Statutes, is amended to read:

651.071 Contracts as preferred claims on liquidation or receivership.—

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1973 (1) In the event of receivership or liquidation proceedings
1974 against a provider, all continuing care and continuing care at-
1975 home contracts executed by a provider are ~~shall be~~ deemed
1976 preferred claims or policyholder loss ~~preferred~~ claims pursuant
1977 to s. 631.271(1)(b) against all assets owned by the provider;
1978 however, such claims are subordinate to any secured claim.
1979 Section 22. Subsection (2) and present paragraph (g) of
1980 subsection (3) of section 651.091, Florida Statutes, are
1981 amended, present paragraphs (h) and (i) of subsection (3) of
1982 that section are redesignated as paragraphs (g) and (h),
1983 respectively, a new paragraph (i) and paragraphs (j), (k), and
1984 (l) are added to that subsection, and paragraph (d) of
1985 subsection (3) and subsection (4) of that section are
1986 republished, to read:
1987 651.091 Availability, distribution, and posting of reports
1988 and records; requirement of full disclosure.—
1989 (2) Every continuing care facility shall:
1990 (a) Display the certificate of authority in a conspicuous
1991 place inside the facility.
1992 (b) Post in a prominent position in the facility which is
1993 accessible to all residents and the general public a concise
1994 summary of the last examination report issued by the office,
1995 with references to the page numbers of the full report noting
1996 any deficiencies found by the office, and the actions taken by
1997 the provider to rectify such deficiencies, indicating in such
1998 summary where the full report may be inspected in the facility.
1999 (c) Provide notice to the president or chair of the
2000 residents' council within 10 business days after issuance of a
2001 final examination report or the initiation of any legal or

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2002 administrative proceeding by the office or the department and
2003 include a copy of such document.
2004 (d) ~~(c)~~ Post in a prominent position in the facility which
2005 is accessible to all residents and the general public a summary
2006 of the latest annual statement, indicating in the summary where
2007 the full annual statement may be inspected in the facility. A
2008 listing of any proposed changes in policies, programs, and
2009 services must also be posted.
2010 (e) ~~(d)~~ Distribute a copy of the full annual statement and a
2011 copy of the most recent third-party ~~third party~~ financial audit
2012 filed with the annual report to the president or chair of the
2013 residents' council within 30 days after filing the annual report
2014 with the office, and designate a staff person to provide
2015 explanation thereof.
2016 (f) ~~(e)~~ Deliver the information described in s. 651.085(4)
2017 in writing to the president or chair of the residents' council
2018 and make supporting documentation available upon request ~~Notify~~
2019 ~~the residents' council of any plans filed with the office to~~
2020 ~~obtain new financing, additional financing, or refinancing for~~
2021 ~~the facility and of any applications to the office for any~~
2022 ~~expansion of the facility~~.
2023 (g) ~~(f)~~ Deliver to the president or chair of the residents'
2024 council a summary of entrance fees collected and refunds made
2025 during the time period covered in the annual report and the
2026 refund balances due at the end of the report period.
2027 (h) ~~(g)~~ Deliver to the president or chair of the residents'
2028 council a copy of each quarterly statement within 30 days after
2029 the quarterly statement is filed with the office if the facility
2030 is required to file quarterly.

(i) ~~(h)~~ Upon request, deliver to the president or chair of the residents’ council a copy of any newly approved continuing care or continuing care at-home contract within 30 days after approval by the office.

(j) Provide to the president or chair of the residents’ council a copy of any notice filed with the office relating to any change in ownership within 10 business days after such filing by the provider.

(k) Make the information available to prospective residents pursuant to paragraph (3)(d) available to current residents and provide notice of changes to that information to the president or chair of the residents’ council within 3 business days.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider’s governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

~~(g) The amount and location of any reserve funds required by this chapter, and the name of the person or entity having a claim to such funds in the event of a bankruptcy, foreclosure,~~

~~or rehabilitation proceeding.~~

(i) Notice of the issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department, including where the report or filing may be inspected in the facility, and that upon request, an electronic copy or specific website address will be provided where the document can be downloaded at no cost.

(j) Notice that the entrance fee is the property of the provider after the expiration of the 7-day escrow requirement under s. 651.055(2).

(k) If the provider operates multiple facilities, a disclosure of any distribution of assets or income between facilities that may occur and the manner in which such distributions would be made, or a statement that such distributions will not occur.

(l) Notice of any holding company system or obligated group of which the provider is a member.

(4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

Section 23. Subsections (1) and (5) of section 651.105,

Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

651.105 Examination and inspections.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to ss. 624.316 and 624.318 ~~s. 624.316~~. For a provider as described ~~defined~~ in s. 651.028, such examinations must ~~shall~~ take place at least once every 5 years. Such examinations must ~~shall~~ be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320. Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(5) A provider must respond to written correspondence from the office and provide data, financial statements, and pertinent information as requested by the office or by the office's

investigators, examiners, or inspectors. The office has standing to petition a circuit court for mandatory injunctive relief to compel access to and require the provider to produce the documents, data, records, and other information requested by the office or its investigators, examiners, or inspectors. The office may petition the circuit court in the county in which the facility is situated or the Circuit Court of Leon County to enforce this section ~~At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council and the executive officer of the governing body of the provider~~.

(7) Unless a provider or facility is impaired or subject to a regulatory action level event, any parent, subsidiary, or affiliate is not subject to examination by the office as part of a routine examination. However, if a provider or facility relies on a contractual or financial relationship with a parent, subsidiary, or affiliate in order to demonstrate the provider or facility's financial condition is in compliance with this chapter, the office may examine any parent, subsidiary, or affiliate that has a contractual or financial relationship with the provider or facility to the extent necessary to ascertain the financial condition of the provider.

(8) If a provider voluntarily contracts with an actuary for an actuarial study or review at regular intervals, the office may not use any recommendations made by the actuary as a measure of performance when conducting an examination or inspection. The office may not request, as part of the examination or inspection, documents associated with an actuarial study or

review marked “restricted distribution” if the study or review is not required by this chapter.

Section 24. Section 651.106, Florida Statutes, is amended to read:

651.106 Grounds for discretionary refusal, suspension, or revocation of certificate of authority.—The office may deny an application or~~,~~ suspend~~,~~ or revoke the provisional certificate of authority or the certificate of authority of any applicant or provider if it finds that any one or more of the following grounds applicable to the applicant or provider exist:

(1) Failure by the provider to continue to meet the requirements for the authority originally granted.

(2) Failure by the provider to meet one or more of the qualifications for the authority specified by this chapter.

(3) Material misstatement, misrepresentation, or fraud in obtaining the authority, or in attempting to obtain the same.

(4) Demonstrated lack of fitness or trustworthiness.

(5) Fraudulent or dishonest practices of management in the conduct of business.

(6) Misappropriation, conversion, or withholding of moneys.

(7) Failure to comply with, or violation of, any proper order or rule of the office or commission or violation of any provision of this chapter.

(8) The insolvent or impaired condition of the provider or the provider’s being in such condition or using such methods and practices in the conduct of its business as to render its further transactions in this state hazardous or injurious to the public.

(9) Refusal by the provider to be examined or to produce

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

its accounts, records, and files for examination, or refusal by any of its officers to give information with respect to its affairs or to perform any other legal obligation under this chapter when required by the office.

(10) Failure by the provider to comply with the requirements of s. 651.026 or s. 651.033.

(11) Failure by the provider to maintain escrow accounts or funds as required by this chapter.

(12) Failure by the provider to meet the requirements of this chapter for disclosure of information to residents concerning the facility, its ownership, its management, its development, or its financial condition or failure to honor its continuing care or continuing care at-home contracts.

(13) Any cause for which issuance of the license could have been refused had it then existed and been known to the office.

(14) Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment or conviction has been entered by the court having jurisdiction of such cases.

(15) In the conduct of business under the license, engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under part IX of chapter 626.

(16) A pattern of bankrupt enterprises.

(17) The ownership, control, or management of the organization includes any person:

(a) Who is not reputable and of responsible character;

(b) Who is so lacking in management expertise as to make the operation of the provider hazardous to potential and existing residents;

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(c) Who is so lacking in management experience, ability, and standing as to jeopardize the reasonable promise of successful operation;

(d) Who is affiliated, directly or indirectly, through ownership or control, with any person whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors; or

(e) Whose business operations are or have been marked by business practices or conduct that is detrimental to the public, stockholders, investors, or creditors.

(18) The provider has not filed a notice of change in management, fails to remove a disapproved manager, or persists in appointing disapproved managers.

Revocation of a certificate of authority under this section does not relieve a provider from the provider's obligation to residents under the terms and conditions of any continuing care or continuing care at-home contract between the provider and residents or the provisions of this chapter. The provider shall continue to file its annual statement and pay license fees to the office as required under this chapter as if the certificate of authority had continued in full force, but the provider shall not issue any new contracts. The office may seek an action in the Circuit Court of Leon County to enforce the office's order and the provisions of this section.

Section 25. Section 651.1065, Florida Statutes, is created to read:

651.1065 Soliciting or accepting new continuing care

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contracts by impaired or insolvent facilities or providers.—

(1) Regardless of whether delinquency proceedings as to a continuing care retirement community have been or are to be initiated, a proprietor, general partner, member, officer, director, trustee, or manager of a continuing care retirement community may not actively solicit, approve the solicitation or acceptance of, or accept new continuing care contracts in this state after the proprietor, general partner, member, officer, director, trustee, or manager knew, or reasonably should have known, that the continuing care retirement community was impaired or insolvent, except with the written permission of the office, unless the facility has declared bankruptcy, in which case the bankruptcy court or trustee appointed by the court has jurisdiction over such matters. The office must approve or disapprove the continued marketing of new contracts within 15 days after receiving a request from a provider.

(2) A proprietor, general partner, member, officer, director, trustee, or manager who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Section 651.111, Florida Statutes, is amended to read:

651.111 Requests for inspections.—

(1) Any interested party may request an inspection of the records and related financial affairs of a provider providing care in accordance with ~~the provisions of~~ this chapter by transmitting to the office notice of an alleged violation of applicable requirements prescribed by statute or by rule, specifying to a reasonable extent the details of the alleged

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

violation, which notice must ~~shall~~ be signed by the complainant.

(2) The substance of the complaint must ~~shall~~ be given to the provider no earlier than the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint, closure statement, or any record which is published, released, or otherwise made available to the provider may ~~shall~~ disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter.

(3) Upon receipt of a complaint, the office shall make a preliminary review; and, unless the office determines that the complaint is without any reasonable basis or the complaint does not request an inspection, the office shall make an inspection. The office shall provide the complainant with a written acknowledgment of the complaint within 15 days after receipt by the office. Such acknowledgment must include the case number assigned by the office to the complaint and the name and contact information of any duly authorized officer, employee, or agent of the office conducting the investigation or inspection pursuant to this chapter. The complainant must ~~shall~~ be advised, within 30 days after the receipt of the complaint by the office, of the proposed course of action of the office, including an estimated timeframe for the handling of the complaint. If the office does not conclude its inspection or investigation within the office’s estimated timeframe, the office must advise the complainant in writing within 15 days after any revised course of action, including a revised estimated timeframe for the

handling of the complaint. Within 15 days after the office completes its inspection or concludes its investigation, the office shall provide the complainant and the provider a written closure statement specifying the office’s findings and the results of any inspection or investigation.

(4) A ~~No~~ provider operating under a certificate of authority under this chapter may not discriminate or retaliate in any manner against a resident or an employee of a facility providing care because such resident or employee or any other person has initiated a complaint pursuant to this section.

Section 27. Section 651.114, Florida Statutes, is amended to read:

651.114 Delinquency proceedings; remedial rights.—

(1) Upon determination by the office that a provider is not in compliance with this chapter, the office may notify the chair of the Continuing Care Advisory Council, who may assist the office in formulating a corrective action plan.

(2) Within 30 days after a request by either the advisory council or the office, a provider shall make a plan for obtaining compliance or solvency available to the advisory council and the office~~, within 30 days after being requested to do so by the council, a plan for obtaining compliance or solvency~~.

(3) Within 30 days after receipt of a plan for obtaining compliance or solvency, the office, or ~~notification,~~ the advisory council at the request of the office, shall:

(a) Consider and evaluate the plan submitted by the provider.

(b) Discuss the problem and solutions with the provider.

2321 (c) Conduct such other business as is necessary.
2322 (d) Report its findings and recommendations to the office,
2323 which may require additional modification of the plan.
2324
2325 This subsection may not be interpreted so as to delay or prevent
2326 the office from taking any regulatory measures it deems
2327 necessary regarding the provider that submitted the plan.
2328 (4) If the financial condition of a continuing care
2329 facility or provider is impaired or is such that if not modified
2330 or corrected, its continued operation would result in
2331 insolvency, the office may direct the provider to formulate and
2332 file with the office a corrective action plan. If the provider
2333 fails to submit a plan within 30 days after the office's
2334 directive, or submits a plan that is insufficient to correct the
2335 condition, the office may specify a plan and direct the provider
2336 to implement the plan. Before specifying a plan, the office may
2337 seek a recommended plan from the advisory council.
2338 (5)~~(4)~~ After receiving approval of a plan by the office,
2339 the provider shall submit a progress report monthly to the
2340 advisory council or the office, or both, in a manner prescribed
2341 by the office. After 3 months, or at any earlier time deemed
2342 necessary, the council shall evaluate the progress by the
2343 provider and shall advise the office of its findings.
2344 (6)~~(5)~~ If ~~Should~~ the office finds ~~find~~ that sufficient
2345 grounds exist for rehabilitation, liquidation, conservation,
2346 reorganization, seizure, or summary proceedings of an insurer as
2347 set forth in ss. 631.051, 631.061, and 631.071, the department
2348 ~~office~~ may petition for an appropriate court order or may pursue
2349 such other relief as is afforded in part I of chapter 631.

2350 Before invoking its powers under part I of chapter 631, the
2351 department ~~office~~ shall notify the chair of the advisory
2352 council.
2353 (7) Notwithstanding s. 631.011, impairment of a provider,
2354 for purposes of s. 631.051, is defined according to the term
2355 "impaired" in s. 651.011.
2356 (8)~~(6)~~ In the event an order of conservation,
2357 rehabilitation, liquidation, or ~~conservation, reorganization,~~
2358 seizure~~, or summary proceeding~~ has been entered against a
2359 provider, the department and office are vested with all of the
2360 powers and duties they have under ~~the provisions of~~ part I of
2361 chapter 631 in regard to delinquency proceedings of insurance
2362 companies. A provider shall give written notice of the
2363 proceeding to its residents within 3 business days after the
2364 initiation of a delinquency proceeding under chapter 631 and
2365 shall include a notice of the delinquency proceeding in any
2366 written materials provided to prospective residents.
2367 ~~(7) If the financial condition of the continuing care~~
2368 ~~facility or provider is such that, if not modified or corrected,~~
2369 ~~its continued operation would result in insolvency, the office~~
2370 ~~may direct the provider to formulate and file with the office a~~
2371 ~~corrective action plan. If the provider fails to submit a plan~~
2372 ~~within 30 days after the office's directive or submits a plan~~
2373 ~~that is insufficient to correct the condition, the office may~~
2374 ~~specify a plan and direct the provider to implement the plan.~~
2375 (9) A provider subject to an order to show cause entered
2376 pursuant to chapter 631 must file its written response to the
2377 order, together with any defenses it may have to the
2378 department's allegations, no later than 20 days after service of

the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(10) A hearing held pursuant to chapter 631 to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing a provider to show cause.

(11)(a)~~(8)(a)~~ The rights of the office described in this section are subordinate to the rights of a trustee or lender pursuant to the terms of a resolution, ordinance, loan agreement, indenture of trust, mortgage, lease, security agreement, or other instrument creating or securing bonds or notes issued to finance a facility, and the office, subject to ~~the provisions of~~ paragraph (c), may ~~shall~~ not exercise its remedial rights provided under this section and ss. 651.018, 651.106, 651.108, and 651.116 with respect to a facility that is not in default of any financial or contractual obligation other than ~~subject to~~ a lien, mortgage, lease, or other encumbrance or trust indenture securing bonds or notes issued in connection with the financing of the facility, if the trustee or lender, by inclusion or by amendment to the loan documents or by a separate contract with the office, agrees that the rights of residents under a continuing care or continuing care at-home contract will be honored and will not be disturbed by a foreclosure or conveyance in lieu thereof as long as the resident:

1. Is current in the payment of all monetary obligations required by the contract;

2. Is in compliance and continues to comply with all provisions of the contract; and

3. Has asserted no claim inconsistent with the rights of

the trustee or lender.

(b) This subsection does not require a trustee or lender to:

1. Continue to engage in the marketing or resale of new continuing care or continuing care at-home contracts;

2. Pay any rebate of entrance fees as may be required by a resident's continuing care or continuing care at-home contract as of the date of acquisition of the facility by the trustee or lender and until expiration of the period described in paragraph (d);

3. Be responsible for any act or omission of any owner or operator of the facility arising before the acquisition of the facility by the trustee or lender; or

4. Provide services to the residents to the extent that the trustee or lender would be required to advance or expend funds that have not been designated or set aside for such purposes.

(c) Should the office determine, at any time during the suspension of its remedial rights as provided in paragraph (a), that the trustee or lender is not in compliance with paragraph (a), or that a lender or trustee has assigned or has agreed to assign all or a portion of a delinquent or defaulted loan to a third party without the office's written consent, the office shall notify the trustee or lender in writing of its determination, setting forth the reasons giving rise to the determination and specifying those remedial rights afforded to the office which the office shall then reinstate.

(d) Upon acquisition of a facility by a trustee or lender and evidence satisfactory to the office that the requirements of paragraph (a) have been met, the office shall issue a 90-day

temporary certificate of authority granting the trustee or lender the authority to engage in the business of providing continuing care or continuing care at-home and to issue continuing care or continuing care at-home contracts subject to the office's right to immediately suspend or revoke the temporary certificate of authority if the office determines that any of the grounds described in s. 651.106 apply to the trustee or lender or that the terms of the contract used as the basis for the issuance of the temporary certificate of authority by the office have not been or are not being met by the trustee or lender since the date of acquisition.

Section 28. Section 651.1141, Florida Statutes, is created to read:

651.1141 Immediate final orders.—The office may issue an immediate final order to cease and desist if the office finds that installation of a general partner of a provider or assumption of ownership or possession or control of 10 percent or more of a provider's assets in violation of s. 651.024 or s. 651.0245, the removal or commitment of 10 percent or more of the required minimum liquid reserve funds in violation of s. 651.035, or the assumption of control over a facility's operations in violation of s. 651.043 has occurred.

Section 29. Paragraphs (d) and (e) of subsection (1) of section 651.121, Florida Statutes, are amended to read:

651.121 Continuing Care Advisory Council.—

(1) The Continuing Care Advisory Council to the office is created consisting of 10 members who are residents of this state appointed by the Governor and geographically representative of this state. Three members shall be administrators of facilities

that hold valid certificates of authority under this chapter and shall have been actively engaged in the offering of continuing care contracts in this state for 5 years before appointment. The remaining members include:

~~(d) An attorney.~~

(d) ~~(e)~~ Four ~~Three~~ residents who hold continuing care or continuing care at-home contracts with a facility certified in this state.

Section 30. Subsections (1) and (4) of section 651.125, Florida Statutes, are amended to read:

651.125 Criminal penalties; injunctive relief.—

(1) Any person who maintains, enters into, or, as manager or officer or in any other administrative capacity, assists in entering into, maintaining, or performing any continuing care or continuing care at-home contract subject to this chapter without ~~doing so in pursuance of~~ a valid provisional certificate of authority or certificate of authority ~~or renewal thereof~~, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or rule adopted in pursuance of this chapter, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this chapter constitutes a separate offense.

(4) Any action brought by the office against a provider shall not abate by reason of a sale or other transfer of ownership of the facility used to provide care, which provider is a party to the action, except with the express written consent of the ~~director of the~~ office.

Section 31. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-8-18
Meeting Date

SB 438
Bill Number (if applicable)

Topic Continuing Care Communities Residents

Amendment Barcode (if applicable)

Name Eric Thorn - Florida Life Care Residents Council

Job Title Staff Counsel

Address 325 John Knox Rd., Ste L103
Street

Tallahassee FL 32308
City State Zip

Phone 850-224-0711

Email ethorn@executiveoffice.org

Speaking: [x] For [ ] Against [ ] Information

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

Representing Florida Life Care Residents Association

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

Lobbyist registered with Legislature: [ ] Yes [x] 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 the Senator or Senate Professional Staff conducting the meeting)

Feb 8
Meeting Date

438
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: For bill

Name: Tim Meenan

Job Title:

Address: 300 S. Duval St.
Street

Tallahassee FL
City *State* *Zip*

Phone: (850) 425-4000

Email: Tim@meenanlawfirm.com

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

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

Representing: Brookdale Senior Living

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/18
Meeting Date

CS/SB 438
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CS/SB 438

Name Steve Bahmer

Job Title President

Address 1812 Riggins
Street

Tallahassee
City State Zip

Phone 850 671 3700

Email sbahmer@leadingageflorida.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing LeadingAge Florida

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

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

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Senate Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 16th, 2017

I respectfully request that **Senate Bill #438**, relating to **Continuing Care Contracts**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

00The 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 General Government

BILL: CS/SB 448

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Agency for State Technology

DATE: February 7, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Fav/CS**
2.	Wilson	Betta	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 448 revises certain powers, duties, and functions of the Agency for State Technology (AST) to provide for collaboration with the Department of Management Services.

The bill authorizes the AST's State Data Center to extend a service-level agreement with an existing customer for up to six months. The State Data Center must file a report with the Executive Office of the Governor within specified timeframes of the signing of an extension or the scheduled expiration of the service-level agreement with the customer. The report must outline the specific issues preventing execution of a new agreement and a schedule for resolving such issues.

The bill authorizes the AST to plan, design, and conduct testing with information technology resources to implement services that are within the scope of the services provided by the state data center, if cost-effective.

The bill deletes expired directives to consolidate agency data centers into the state data center.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2018.

II. Present Situation:

Enterprise Information Technology Services Management Act

Chapter 282, F.S., is known as the Enterprise Information Technology Services Management Act.[1]

The State Technology Office (STO) was established in the Department of Management Services (DMS) in 1997.[2] During the 2000 and 2001 legislative sessions,[3] the Legislature significantly amended statutes allowing for the consolidation and centralization of information technology (IT) assets and resources for executive branch agencies. While other sections of statute were amended to accomplish this policy direction, the primary chapter amended was Part I of Chapter 282, F.S., to either take existing powers and duties assigned to the DMS and transfer these powers and duties to the STO, or prescribe additional powers and duties to the STO to accomplish the policy direction of consolidating and centralizing IT. One of the STO's new duties included developing and implementing service level agreements[4] with each agency that the STO provided IT services.

In 2007, the Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise IT services, to include IT security.[5] The State Data Center was created by the Legislature in 2008.[6]

In 2014, the Legislature abolished the AEIT and transferred its duties to the then newly created AST.[7]

Agency for State Technology

The AST was created on July 1, 2014.[8] The executive director of AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities of the AST include:[9]

- Developing and publishing IT policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of $10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.

[1] Section 282.003, F.S.
[2] Chapter 97-286, L.O.F.
[3] Chapter 2000-164, L.O.F.; Chapter 2001-261, L.O.F.
[4] Section 282.0041(20), F.S., defines the term "service level agreement" to mean a written contract between the state data center and a customer entity which specifies the scope of services provided, service level, the duration of the agreement, the responsible parties, and service costs. A service-level agreement is not a rule pursuant to chapter 120.
[5] Chapter 2007-105, L.O.F.
[6] Chapter 2008-116, L.O.F.
[7] Chapter 2014-221, L.O.F.
[8] Chapter 2014-221, L.O.F.
[9] Section 282.0051, F.S.

- Establishing best practices for procurement of IT products in collaboration with the DMS.
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with the DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by the AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency[10] IT project that has a total project cost of $25 million or more and impacts one or more other agencies.
- Consulting with state agencies regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate and the Speaker of the House of Representatives regarding state IT standards or policies that conflict with federal regulations or requirements.
- Establishing policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services in collaboration with the DMS. The IT policy must include:
    - Identification of the IT product and service categories to be included in state term contracts.
    - Requirements to be included in solicitations for state term contracts.
    - Evaluation criteria for the award of IT-related state term contracts.
    - The term of each IT-related state term contract.
    - The maximum number of vendors authorized on each state term contract.
- In collaboration with the DMS, evaluating vendor responses for state term contract solicitations and invitations to negotiate, answering vendor questions on state term contract solicitations, and ensuring that IT policy is included in all solicitations and contracts that are administratively executed by the DMS.

State Data Center Service-Level Agreements

The State Data Center is established within the AST and provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable

[10] Section 20.03(1), F.S. The term "cabinet" means collectively the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in s. 4, Art. IV of the State Constitution.

security, privacy, and auditing requirements.[11] The State Data Center must enter into a service-level agreement with each customer entity to provide required type and level of service or services. If a customer fails to execute an agreement within 60 days after commencement of service, the State Data Center may cease service.

Below is a table listing the customers of the AST's State Data Center. The customers include state agencies, a water management district, a county, local agencies, and non-profit organizations.

AST Agency Customers	
Agency for Health Care Administration	Department of State
Agency for Persons with Disabilities	Department of Veterans' Affairs
Department of Citrus	Executive Office of the Governor
Department of Business & Professional Regulation	Executive Office of the Governor – Division of Emergency Management
Department of Corrections	Fish & Wildlife Conservation Commission
Department of Children & Families	Florida Commission on Human Relations
Department of Economic Opportunity	Department of Highway Safety & Motor Vehicles
Department of Environmental Protection	Justice Administrative Commission
Department of Juvenile Justice	Public Employees Relations Commission
Department of Military Affairs	Public Service Commission
Department of Management Services	Northwest Florida Water Management District
Department of Education	Santa Rosa County
Department of Elder Affairs	Miami-Dade Expressway Authority
Department of Health	Greater Orlando Aviation Authority
Department of Lottery	Children Home Society
Department of Revenue	Department of Transportation
Auditor General	The Cope Center

From 2008 to 2014, s. 282.203, F.S., allowed an existing customer's service-level agreement with the AST to continue under the terms of the previous fiscal year's agreement, if a customer did not execute a new service-level agreement within 60 days of the agreement's expiration.

Funding Methodology

The Department of Financial Services (DFS) has responsibility for the preparation of the annual Statewide Cost Allocation Plan (SWCAP) required under the provisions of the U.S. Management and Budget (OMB) Circular A-87.[12] The circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state, local, and federally recognized Indian tribal governments. The SWCAP is the mechanism by which the state identifies, summarizes, and allocates statewide indirect costs. The SWCAP also includes financial and billing information for central services

[11] Section 282.201, F.S.
[12] Section 215.195(1), F.S. Also, see 2 CFR Part 225, Appendix C, Appendix D, and Appendix E.

directly charged to agencies or programs. The DFS must ensure that the SWCAP represents the most favorable allocation of central services cost allowable to the state by the Federal government.[13]

Appendix C of OMB Circular A-87, defines "billed central services" as central services billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical expenditures of billed central services include computer services, transportation services, insurance, and fringe benefits.[14]

The services provided by the State Data Center to state agencies are an example of "billed central services." The State Data Center must adhere to the SWCAP in accounting for agency resources utilized.

Pilot Projects

From 2008 to 2014, s. 282.203, F.S., allowed the primary data centers to plan, design, and establish pilot projects and conduct experiments with IT resources.

III. Effect of Proposed Changes:

Section 1 amends s. 282.0051(18)(b), F.S., to clarify that the AST will evaluate vendor responses only for state term contract solicitations and invitations to negotiate that are specifically related to IT. This change removes ambiguity of whether the AST had a duty to evaluate state-term contract solicitations and invitation to bids that were not IT-related.

Section 282.0051(18)(c), F.S., is amended to provide that the AST will answer vendor questions only on IT-related state term contract solicitations. This change removes the ambiguity of whether the AST had a duty to answer vendor questions on state-term contract solicitations that were not IT-related.

Section 282.0051(18)(d), F.S., is amended to provide that the AST shall ensure all IT-related solicitations by the DMS are procured, and state contracts are managed, in accordance with existing policy established under s. 282.0051(18)(a), F.S. This change clarifies the AST's duty does not apply to non-IT solicitations and state term contracts.

Section 2 amends s. 282.201(2)(d), F.S., to allow a State Data Center service-level agreement to be extended for up to six months. If the State Data Center and an existing customer execute a service-level agreement extension or fail to execute a new service-level agreement, the State Data Center must submit a report to the Executive Office of the Governor within five days after the date of the executed extension, or 15 days before the scheduled expiration date of the service-level agreement. Such report must explain the specific issues preventing execution of a new service-level agreement and describe the plan and schedule for resolving those issues.

In addition, this section:

---

[13] *Id.*
[14] 2 CFR Part 225, Appendix C.

- Deletes the requirement within a service-level agreement to provide certain termination notice to the AST;
- Authorizes the AST to plan, design, and conduct testing with IT resources to implement services that are within the scope of services provided by the State Data Center, if cost effective; and
- Deletes obsolete provisions related to the schedule for consolidations of agency data centers.

Section 3 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the AST, the bill has no fiscal impact.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[15] AST, *Senate Bill 448 Analysis* (Oct. 13, 2017) (copy on file with the Senate Governmental Oversight and Accountability Committee).

VIII. Statutes Affected:

This bill amends sections 282.0051 and 282.201 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on January 23, 2018:
The Committee Substitute:

- Deletes provisions of the original bill revising definitions of "breach" and "incident" contained in s. 282.0041, F.S.; and
- Deletes provisions of original bill reenacting s. 943.0415, F.S., relating to the Cybercrime Office within the Department of Law Enforcement.

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability; and Senator Brandes

1 A bill to be entitled
2 An act relating to the Agency for State Technology;
3 amending s. 282.0051, F.S.; revising certain powers,
4 duties, and functions of the agency in collaboration
5 with the Department of Management Services; amending
6 s. 282.201, F.S.; authorizing the state data center
7 within the agency to extend, up to a specified
8 timeframe, certain service-level agreements; requiring
9 the state data center to submit a specified report to
10 the Executive Office of the Governor under certain
11 circumstances; deleting a requirement for a service-
12 level agreement to provide a certain termination
13 notice to the agency; requiring the state data center
14 to plan, design, and conduct certain testing, if cost-
15 effective; deleting obsolete provisions relating to
16 the schedule for consolidations of agency data
17 centers; conforming provisions to changes made by the
18 act; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Subsection (18) of section 282.0051, Florida
23 Statutes, is amended to read:
24 282.0051 Agency for State Technology; powers, duties, and
25 functions.—The Agency for State Technology shall have the
26 following powers, duties, and functions:
27 (18) In collaboration with the Department of Management
28 Services:
29 (a) Establish an information technology policy for all

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30 information technology-related state contracts, including state
31 term contracts for information technology commodities,
32 consultant services, and staff augmentation services. The
33 information technology policy must include:
34 1. Identification of the information technology product and
35 service categories to be included in state term contracts.
36 2. Requirements to be included in solicitations for state
37 term contracts.
38 3. Evaluation criteria for the award of information
39 technology-related state term contracts.
40 4. The term of each information technology-related state
41 term contract.
42 5. The maximum number of vendors authorized on each state
43 term contract.
44 (b) Evaluate vendor responses for information technology-
45 related state term contract solicitations and invitations to
46 negotiate.
47 (c) Answer vendor questions on information technology-
48 related state term contract solicitations.
49 (d) Ensure that all information technology-related
50 solicitations by the department are procured and state contracts
51 are managed in accordance with the information technology policy
52 established under ~~pursuant to~~ paragraph (a) ~~is included in all~~
53 ~~solicitations and contracts which are administratively executed~~
54 ~~by the department~~.
55 Section 2. Paragraph (d) of subsection (2) of section
56 282.201, Florida Statutes, is amended, paragraph (g) is added to
57 that subsection, and subsection (4) of that section is amended,
58 to read:

59 282.201 State data center.—The state data center is
60 established within the Agency for State Technology and shall
61 provide data center services that are hosted on premises or
62 externally through a third-party provider as an enterprise
63 information technology service. The provision of services must
64 comply with applicable state and federal laws, regulations, and
65 policies, including all applicable security, privacy, and
66 auditing requirements.
67 (2) STATE DATA CENTER DUTIES.–The state data center shall:
68 (d) Enter into a service-level agreement with each customer
69 entity to provide the required type and level of service or
70 services. If a customer entity fails to execute an agreement
71 within 60 days after commencement of a service, the state data
72 center may cease service. A service-level agreement may not have
73 an original ~~a~~ term exceeding 3 years, but the service-level
74 agreement may be extended for up to 6 months. If the state data
75 center and an existing customer entity either execute an
76 extension or fail to execute a new service-level agreement
77 before the expiration of an existing service-level agreement,
78 the state data center must submit a report to the Executive
79 Office of the Governor within 5 days after the date of the
80 executed extension or 15 days before the scheduled expiration
81 date of the service-level agreement, as applicable, to explain
82 the specific issues preventing execution of a new service-level
83 agreement and to describe the plan and schedule for resolving
84 those issues. A service-level agreement, ~~and~~ at a minimum, must:
85 1. Identify the parties and their roles, duties, and
86 responsibilities under the agreement.
87 2. State the duration of the contract term and specify the

88 conditions for renewal.
89 3. Identify the scope of work.
90 4. Identify the products or services to be delivered with
91 sufficient specificity to permit an external financial or
92 performance audit.
93 5. Establish the services to be provided, the business
94 standards that must be met for each service, the cost of each
95 service, and the metrics and processes by which the business
96 standards for each service are to be objectively measured and
97 reported.
98 6. Provide a timely billing methodology to recover the cost
99 of services provided to the customer entity pursuant to s.
100 215.422.
101 7. Provide a procedure for modifying the service-level
102 agreement based on changes in the type, level, and cost of a
103 service.
104 8. Include a right-to-audit clause to ensure that the
105 parties to the agreement have access to records for audit
106 purposes during the term of the service-level agreement.
107 9. Provide that a service-level agreement may be terminated
108 by either party for cause only after giving the other party ~~and~~
109 ~~the Agency for State Technology~~ notice in writing of the cause
110 for termination and an opportunity for the other party to
111 resolve the identified cause within a reasonable period.
112 10. Provide for mediation of disputes by the Division of
113 Administrative Hearings pursuant to s. 120.573.
114 (g) Plan, design, and conduct testing with information
115 technology resources to implement services within the scope of
116 the services provided by the state data center, if cost-

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117 effective.
118 (4) ~~SCHEDULE FOR~~ CONSOLIDATIONS OF AGENCY DATA CENTERS.—
119 ~~(a) Consolidations of agency data centers and computing~~
120 ~~facilities into the state data center shall be made by the dates~~
121 ~~specified in this section and in accordance with budget~~
122 ~~adjustments contained in the General Appropriations Act.~~
123 ~~(b) During the 2013-2014 fiscal year, the following state~~
124 ~~agencies shall be consolidated by the specified date:~~
125 ~~1. By October 31, 2013, the Department of Economic~~
126 ~~Opportunity.~~
127 ~~2. By December 31, 2013, the Executive Office of the~~
128 ~~Governor, to include the Division of Emergency Management except~~
129 ~~for the Emergency Operation Center's management system in~~
130 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~
131 ~~Starke.~~
132 ~~3. By March 31, 2014, the Department of Elderly Affairs.~~
133 ~~4. By October 30, 2013, the Fish and Wildlife Conservation~~
134 ~~Commission, except for the commission's Fish and Wildlife~~
135 ~~Research Institute in St. Petersburg.~~
136 (a)~~(c)~~ The following agency data centers are exempt from
137 state data center consolidation under this section: the
138 Department of Law Enforcement, the Department of the Lottery's
139 Gaming System, Systems Design and Development in the Office of
140 Policy and Budget, the regional traffic management centers as
141 described in s. 335.14(2) and the Office of Toll Operations of
142 the Department of Transportation, the State Board of
143 Administration, state attorneys, public defenders, criminal
144 conflict and civil regional counsel, capital collateral regional
145 counsel, and the Florida Housing Finance Corporation.

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146 (b)~~(d)~~ A state agency that is consolidating its agency data
147 center or computing facility into the state data center must
148 execute a new or update an existing service-level agreement
149 within 60 days after the commencement of the service. If a state
150 agency and the state data center are unable to execute a
151 service-level agreement by that date, the agency shall submit a
152 report to the Executive Office of the Governor within 5 working
153 days after that date which explains the specific issues
154 preventing execution and describing the plan and schedule for
155 resolving those issues.
156 (c)~~(e)~~ Each state agency consolidating ~~scheduled for~~
157 ~~consolidation~~ into the state data center shall submit a
158 transition plan to the Agency for State Technology by July 1 of
159 the fiscal year before the fiscal year in which the ~~scheduled~~
160 consolidation will occur. Transition plans must ~~shall~~ be
161 developed in consultation with the state data center and must
162 include:
163 1. An inventory of the agency data center's resources being
164 consolidated, including all hardware and its associated life
165 cycle replacement schedule, software, staff, contracted
166 services, and facility resources performing data center
167 management and operations, security, backup and recovery,
168 disaster recovery, system administration, database
169 administration, system programming, job control, production
170 control, print, storage, technical support, help desk, and
171 managed services, but excluding application development, and the
172 agency's costs supporting these resources.
173 2. A list of contracts in effect, including, but not
174 limited to, contracts for hardware, software, and maintenance,

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175 which identifies the expiration date, the contract parties, and
176 the cost of each contract.
177 3. A detailed description of the level of services needed
178 to meet the technical and operational requirements of the
179 platforms being consolidated.
180 4. A timetable with significant milestones for the
181 completion of the consolidation.
182 (d)~~(f)~~ Each state agency consolidating ~~scheduled for~~
183 ~~consolidation~~ into the state data center shall submit with its
184 respective legislative budget request the specific recurring and
185 nonrecurring budget adjustments of resources by appropriation
186 category into the appropriate data processing category pursuant
187 to the legislative budget request instructions in s. 216.023.
188 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/18
Meeting Date

448
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: AST

Name: JAMES TAYLOR

Job Title: Executive Director

Address: 115 E. PARK AVE.
Street

TALLAHASSEE — FL — 32301
City — State — Zip

Phone: 850-803-8324

Email: James.Taylor@FLTechCouncil.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: The FLORIDA TECHNOLOGY 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

Committee Agenda Request

To: Senator David Simmons
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 23, 2018

I respectfully request that **Senate Bill #448**, relating to **Agency for State Technology**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 General Government

BILL: CS/SB 614

INTRODUCER: Community Affairs Committee and Senator Montford

SUBJECT: Participant Local Government Advisory Council

DATE: February 7, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.	Davis/McVaney	Betta	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

The Local Government Surplus Funds Trust Fund (Florida PRIME) was created in 1977 to promote, through state assistance, the maximization of net interest earnings on invested surplus funds of local governments. All units of local government in Florida are permitted to invest their surplus funds in Florida PRIME. The State Board of Administration is responsible for administering Florida PRIME, and independent oversight is provided by the Investment Advisory Council (IAC) and the Participant Local Government Advisory Council (PLGAC). The six member Participant Local Government Advisory Council was created by the Legislature in 2008 following an unanticipated liquidity crisis in Florida PRIME for the purpose of regularly reviewing the administration of Florida PRIME and making recommendations regarding such administration to the Trustees. In its 2017 report, the PLGAC expressed that it had achieved all of its objectives, and recommended discontinuing the PLGAC.

CS/SB 614 abolishes the Participant Local Government Advisory Council and makes conforming changes due to the abolishment.

The State Board of Administration (SBA) anticipates a reduction in expenditures of approximately $25,000 associated with the abolishment of the PLGAC.

II. Present Situation:

The State Board of Administration

The State Board of Administration ("SBA") is established by article IV, section 4 of the state Constitution.[1] The SBA is composed of the Governor as chair, the chief financial officer, and the attorney general (known collectively as the Trustees).[2] The statutory mandate of the SBA is to invest, manage, and safeguard assets of the Florida Retirement System Trust Fund, as well as the assets of a variety of other funds, including Florida PRIME.[3] The SBA's current assets under management, as of October 26, 2017, total $195,681,813,624.[4]

The Investment Advisory Council ("IAC") provides independent oversight of the SBA's funds and major investment responsibilities, including Florida PRIME.[5] The SBA appoints nine members to serve on the council for four-year terms.[6] Those appointed must possess special knowledge, experience, and familiarity with portfolio management, institutional investments, and fiduciary responsibilities.[7] The IAC is responsible for reviewing investments made by SBA, and makes recommendations regarding investment policy, strategy, and procedures. The IAC meets quarterly to discuss general policies like risk budgets, alternative investments, and investment protection principles.[8]

Florida PRIME and Fund B Surplus Funds Trust Fund

Florida PRIME was created in 1977 to promote the maximization of net interest earnings on invested surplus funds of local governments.[9] All units of local government in Florida are permitted to invest their surplus funds in Florida PRIME.[10] The SBA may invest any funds of state agencies, state universities or colleges, and any of their direct support organizations in Florida PRIME.[11] The SBA is responsible for administering Florida PRIME,[12] and the IAC and the PLGAC provide independent oversight.[13] As of August 31, 2017, Florida PRIME contains approximately $8.9 billion in assets and serves 745 participants across the state.[14]

In 2007, Florida PRIME experienced an unanticipated liquidity crisis when participants withdrew an unprecedented $14 billion in funds in a single month.[15] The withdrawals were triggered by fears of exposure to "subprime commercial paper."[16] Florida PRIME held a small

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[1] FLA. CONST. art. IV, s. 4(e).
[2] *Id.*
[3] Section 215.44(1), F.S.
[4] State Board of Administration, *Senate Bill 614 Analysis* (October 27, 2017).
[5] Section 215.444, F.S.
[6] *Id.*
[7] *Id.*
[8] State Board of Administration, *Senate Bill 614 Analysis* (October 27, 2017).
[9] Section 218.405, F.S.
[10] State Board of Administration, *Senate Bill 614 Analysis* (October 27, 2017).
[11] *Id.*
[12] Section 218.405, F.S.
[13] Section 218.409, F.S.
[14] State Board of Administration, *Senate Bill 614 Analysis* (October 27, 2017).
[15] *Id.*
[16] *Id.*

amount of securities that, while rated top-tier at the time of purchase, subsequently became distressed. As a result, the SBA Trustees implemented a temporary four-day freeze on withdrawals and deposits and created a separate second fund, the Fund B Surplus Funds Trust Fund ("Fund B"), to hold these distressed securities.[17]

In 2008, the Legislature passed a law to address the repayment of principal to Florida PRIME participants and statutorily created Fund B to maximize the present value of original principal balances.[18]

Participant Local Government Agency Council

In 2008, the Legislature also created the PLGAC.[19] The six-member council had the purposes of regularly reviewing the administration of Florida PRIME and making recommendations regarding such administration to the SBA Trustees.[20] The members are appointed by the SBA for four-year terms and must be confirmed by the Senate.[21] Members must possess special knowledge, experience, and familiarity obtained through active, long-standing, and material participation in the dealings of the trust fund.[22] The PLGAC must prepare and submit a biennial report to the SBA, the SBA Trustees, the IAC, and the Joint Legislative Auditing Committee that describes the council's activities and recommendations.[23]

In its 2017 report, the PLGAC expressed that it had achieved all of its objectives, including providing guidance and oversight for all of Florida PRIME's operations and investment activities.[24] Specifically, Florida PRIME's investment portfolio had increased by 86 percent, representing $4.9 billion in net-asset-value growth.[25] In addition, in September 2015, the legacy Fund B original principal amount was returned in full to fund participants alongside a significant proportion of the November 2007 interest earnings.[26] For these reasons, the report recommended discontinuing the PLGAC while simultaneously maintaining all current risk controls, investment policies, and participant disclosures.[27]

III. Effect of Proposed Changes:

The bill abolishes the PLGAC from the statutes governing Florida PRIME and Fund B, and makes conforming changes because of the abolishment. The IAC will continue to provide independent oversight of both funds.

[17] *Id.*
[18] Chapter 2008-93, Laws of Fla. (creating 218.417, F.S., effective May 28, 2008.)
[19] Chapter 2008-59, Laws of Fla. (creating 218.409(10), F.S., effective May 28, 2008).
[20] Section 218.409 (10), F.S.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Participant Local Government Advisory Council, *Biennial Report 2017*, at page 19, https://www.sbafla.com/prime/Portals/8/PLGAC/PLGAC_BiennialReport2017.pdf?ver=2017-03-14-121204-983 (last visited November 20, 2017).
[25] *Id.*
[26] *Id.*
[27] *Id.*

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The SBA reports there will be a reduction of expenses by approximately $25,000 due to the abolishment of the PLGAC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1344, reviser's bill, repeals ss. 218.417, 218.418, 218.421, and 218.422, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 218.409, 218.421, and 218.422.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on January 16, 2018:
Amends the effective date of the bill at the recommendation of the SBA.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Montford

A bill to be entitled

An act relating to the Participant Local Government Advisory Council; amending s. 218.409, F.S.; abolishing the Participant Local Government Advisory Council; amending ss. 218.421 and 218.422, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2), subsection (6), paragraph (a) of subsection (8), and subsections (9) and (10) of section 218.409, Florida Statutes, are amended to read:

218.409 Administration of the trust fund~~; creation of advisory council~~.—

(2)

(d) The investment policy shall be reviewed and approved annually by the trustees or when market changes dictate, and in each event the investment policy shall be reviewed by the Investment Advisory Council ~~and by the Participant Local Government Advisory Council~~.

(6)(a) The board or a professional money management firm shall provide a report, at a minimum monthly or upon the occurrence of a material event, to every participant having a beneficial interest in the trust fund, the board's executive director, the trustees, the Joint Legislative Auditing Committee, and the Investment Advisory Council~~, and the Participant Local Government Advisory Council~~. The report shall include:

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

1. Reports of any material impacts on the trust fund and any actions or escalations taken by staff to address such impacts. The trustees shall provide quarterly a report to the Joint Legislative Auditing Committee that the trustees have reviewed and approved the monthly reports and actions taken, if any, to address any impacts.

2. A management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last month. This management summary shall be prepared in a manner that will allow anyone to ascertain whether investment activities during the reporting period have conformed to investment policies. Such reporting shall be in conformance with best market practices. The board or a professional money management firm shall furnish upon request the details of an investment transaction to any participant, the trustees, and the Investment Advisory Council~~, and the Participant Local Government Advisory Council~~.

(b) The market value of the portfolio shall be calculated daily. Withdrawals from the trust fund shall be based on a process that is transparent to participants and will ensure that advantages or disadvantages do not occur to parties making deposits or withdrawals on any particular day. A statement of the market value and amortized cost of the portfolio shall be issued to participants in conjunction with any deposits or withdrawals. In addition, this information shall be reported monthly with the items in paragraph (a) to participants, the trustees, and the Investment Advisory Council~~, and the Participant Local Government Advisory Council~~. The review of the investment portfolio, in terms of value and price volatility,

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

shall be performed with practices consistent with the GFOA Recommended Practice on “Mark-to-Market Practices for State and Local Government Investment Portfolios and Investment Pools.” In defining market value, consideration shall be given to GASB Statement 31. Additional reporting may be made to pool participants through regular and frequent ongoing multimedia educational materials and communications, including, but not limited to, historical performance, investment holdings, amortized cost and market value of the trust fund, credit quality, and average maturity of the trust fund investments.

(8)(a) The principal, and any part thereof, of each account constituting the trust fund is subject to payment at any time from the moneys in the trust fund. However, the executive director may, in good faith, on the occurrence of an event that has a material impact on liquidity or operations of the trust fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the board can invest moneys entrusted to it in exercising its fiduciary responsibility. Such action must be immediately disclosed to all participants, the trustees, the Joint Legislative Auditing Committee, and the Investment Advisory Council~~, and the Participant Local Government Advisory Council~~. The trustees shall convene an emergency meeting as soon as practicable from the time the executive director has instituted such measures and review the necessity of those measures. If the trustees are unable to convene an emergency meeting before the expiration of the 48-hour moratorium on contributions and withdrawals, the moratorium may be extended by the executive director until the trustees are able to meet to review the necessity for the moratorium. If the

trustees agree with such measures, the trustees shall vote to continue the measures for up to an additional 15 days. The trustees must convene and vote to continue any such measures before the expiration of the time limit set, but in no case may the time limit set by the trustees exceed 15 days.

(9) The Auditor General shall conduct an annual financial audit of the trust fund, which shall include testing for compliance with the investment policy. The completed audit shall be provided to the participants, the board, the trustees, the Investment Advisory Council, ~~the Participant Local Government Advisory Council,~~ and the Joint Legislative Auditing Committee. As soon as practicable, but no later than 30 days after completion of the audit, the trustees shall report to the Joint Legislative Auditing Committee that the trustees have reviewed the audit of the trust fund and shall certify that any necessary items are being addressed by a corrective action plan that includes target completion dates.

~~(10)(a) There is created a six-member Participant Local Government Advisory Council for the purposes of regularly reviewing the administration of the trust fund and making recommendations regarding such administration to the trustees. The members of the council shall be appointed by the board and subject to confirmation by the Senate. Members must possess special knowledge, experience, and familiarity obtained through active, long-standing, and material participation in the dealings of the trust fund. Each member shall serve a 4-year term. Any vacancy shall be filled for the remainder of the unexpired term. The council shall annually elect a chair and vice chair from within its membership. A member may not serve~~

117 ~~consecutive terms as chair or vice chair.~~
118 ~~(b) The council shall prepare and submit a written biennial~~
119 ~~report to the board, trustees, the Investment Advisory Council,~~
120 ~~and the Joint Legislative Auditing Committee that describes the~~
121 ~~activities and recommendations of the council.~~
122 Section 2. Paragraph (c) of subsection (2) and paragraph
123 (a) of subsection (3) of section 218.421, Florida Statutes, are
124 amended to read:
125 218.421 Fund B Surplus Funds Trust Fund; purpose;
126 rulemaking; administration; reporting.—
127 (2)
128 (c) The investment policy shall be reviewed and approved by
129 the trustees upon the transfer of the funds into the trust fund
130 or when market changes dictate, and in each event, the
131 investment policy shall be reviewed by the Investment Advisory
132 Council ~~and by the Participant Local Government Advisory~~
133 ~~Council~~.
134 (3)(a) The board or a professional money management firm
135 shall provide a report at a minimum, monthly, or upon the
136 occurrence of a material event, to every participant having a
137 beneficial interest in the trust fund, the board's executive
138 director, the trustees, the Joint Legislative Auditing
139 Committee, and the Investment Advisory Council~~, and the~~
140 ~~Participant Local Government Advisory Council~~. The report shall
141 include:
142 1. Reports of any material impacts on the trust fund, and
143 any actions or escalations taken by staff to address such
144 impacts. The trustees shall provide quarterly a report to the
145 Joint Legislative Auditing Committee that the trustees have

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

146 reviewed and approved the monthly reports and actions taken, if
147 any, to address any impacts.
148 2. A management summary that provides an analysis of the
149 status of the current investment portfolio and the individual
150 transactions executed over the last month. This management
151 summary shall be prepared in a manner that will allow anyone to
152 ascertain whether investment activities during the reporting
153 period have conformed to investment policies. Such reporting
154 shall be in conformance with best market practices.
155 3. The board or a professional money management firm shall
156 furnish upon request the details of an investment transaction to
157 any participant, the trustees, and the Investment Advisory
158 Council~~, and the Participant Local Government Advisory Council~~.
159 Section 3. Section 218.422, Florida Statutes, is amended to
160 read:
161 218.422 Fund B Surplus Funds Trust Fund; review.—Unless the
162 Fund B Surplus Funds Trust Fund has been terminated by law or
163 through self-liquidation, prior to the 2013 Regular Session of
164 the Legislature, the Auditor General shall review the trust fund
165 and the steps taken up to that time to return as much of the
166 principal to the participants as possible and provide a summary
167 report to the board, the trustees, the President of the Senate,
168 the Speaker of the House of Representatives, and the Investment
169 Advisory Council~~, and the Participant Local Government Advisory~~
170 ~~Council~~.
171 Section 4. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Senate Committee on Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 18, 2018

I respectfully request that SB 614 on Participant Local Government Advisory Council be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Bill Montford
Florida Senate, District 3

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 General Government

BILL: SB 780

INTRODUCER: Senator Brandes

SUBJECT: Prohibition Against Contracting with Scrutinized Companies

DATE: February 7, 2018 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Davis	Betta	AGG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 780 prohibits a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of any amount.

The bill also requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

An agency or local governmental entity is authorized to make a case-by-case exception to the prohibition of contracting with companies that are on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel if certain conditions are met.

Additionally, the bill requires a company to provide certification that it is not engaging in a boycott of Israel before submitting a bid or entering into or renewing a contract with an agency or local governmental entity.

The fiscal impact on state and local governments is indeterminate.

The bill takes effect July 1, 2018.

II. Present Situation:

Procurement of Personal Property and Services

Procurement of Personal Property and Services by State Agencies

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services.[2] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services[3] as well as commodities needed to support agency activities.[4] The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.[5]

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, [6] which are 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, [7] which are used when an agency determines that standard services or goods will meet its needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP), [8] 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), [9] which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.

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[1] As defined in s. 287.012(1), F.S., "agency" means 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] Personal property" is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, *and other personal property*, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

[3] As defined in s. 287.012(8), F.S. "contractual service" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder.

[4] *See* ss. 287.032 and 287.042, F.S.

[5] Section 287.032(2), F.S.

[6] Section 287.057(3)(c), F.S.

[7] Section 287.057(1)(a), F.S.

[8] Section 287.057(1)(b), F.S.

[9] Section 287.057(1)(c), F.S.

Criteria used to evaluate proposals received pursuant to a RFP must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated;
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and
- Consideration of prior relevant experience of the vendor.[10]

In ITNs, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN. The evaluation criteria must also include consideration of prior relevant experience of the vendor.[11]

Contracts for commodities or contractual services in excess of $35,000 must be procured utilizing a competitive solicitation process.[12] However, specified contractual services and commodities, such as artistic services and legal services, are not subject to competitive solicitation requirements.[13]

State Term Contracts

Current law authorizes the DMS to establish purchasing agreements and procure state term contracts for commodities and contractual services using the procurement methods described above.[14] These contracts are generally developed for purchases of commodities and services that are ongoing and common to multiple state agencies. State agencies are required to use state term contracts when they are available.[15] Other eligible users,[16] such as counties, cities, and school districts, may also utilize state term contracts.[17]

Procurement of Personal Property and Services by Local Governments

Local governments are not subject to the provisions of ch. 287.057, F.S., which prescribe methods for agencies' procurement of commodities or contractual services.[18] Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.[19]

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[10] Section 287.057(1)(b)3., F.S.
[11] Section 287.057(1)(c)3., F.S.
[12] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[13] *See* s. 287.057(3)(e), F.S.
[14] Section 287.042(2)(a), F.S.
[15] Section 287.056(1), F.S.
[16] *See* s. 287.012(11), F.S., and Rule 60A-1.001(2), F.A.C.
[17] Section 287.056(1), F.S.
[18] *See* ss. 287.012(1), F.S.
[19] In the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious. *Volume Servs. Div. of Interstate United Corp. v. Canteen Corp.*, 369 So. 2d 391 (Fla. 2d DCA 1979).

State and Local Government Procurement of Certain Professional Services

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.[20]

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),[21] which specifies the necessary procedures when procuring professional services[22] by an agency.[23]

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:[24]
- A project, when the agency estimates the basic construction cost to exceed $325,000.
- A planning or study activity, when the fee for professional services exceeds $35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.[25] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.[26]

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[20] Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, *available at* http://www.acec.org/advocacy/qbs/ (last visited Jan. 11, 2018).
[21] Chapter 73-19, L.O.F.
[22] Section 287.055(2)(a), F.S., defines "professional services" as those within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
[23] Section 287.055(2)(b), F.S., defines "agency" as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.
[24] Section 287.055(3)(a)1., F.S.
[25] Sections 287.055(4) and (5), F.S.
[26] Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

The CCNA prohibits the agency from requesting, accepting, and considering, during the competitive selection process, proposals for the compensation to be paid.[27]
Section 287.055(2)(d), F.S., defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”[28] If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.[29] The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.[30] If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.[31] Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.[32]

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the DMS to establish, by rule,[33] the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, the DMS must provide procedures for cases in which the DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS Secretary determines that such negotiations are in the best interest of the state.

[27] *Id.*
[28] Section 287.055(5)(a), F.S.
[29] Section 287.055(5)(b), F.S.
[30] *Id.*
[31] Section 287.055(5)(c), F.S.
[32] Op. Att’y Gen. Fla. 2011-21 (2011).
[33] *See* Chapter 60D-5, F.A.C., that establishes the procedures for s. 255.29, F.S. Rule 60D-5.001, F.A.C., requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; in requesting authority to negotiate contracts, and in negotiating contracts.

- Entering into performance-based contracts for the development of public facilities when the DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:[34]

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of $200,000.[35] County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of $200,000 also must be bid competitively.[36] Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of $300,000.[37]

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than $200,000 must be advertised publicly in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.[38] If the state construction project is projected to exceed $500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening, and at least five days prior to any scheduled prebid conference.[39]

Scrutinized Companies

Current law limits state and local governments from contracting for goods or services with scrutinized companies[40] and companies that are engaged in a boycott of Israel.[41] Specifically, companies on the Scrutinized Companies that Boycott Israel List[42] or engaged in a boycott of Israel[43] or on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized

[34] Section 255.29(4)(a)-(d), F.S.
[35] Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.
[36] Section 255.0525(2), F.S.
[37] Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.). For electrical work, local governments must competitively award projects estimated to cost more than $75,000 to an appropriately licensed contractor.
[38] Section 255.0525(1), F.S.
[39] *Id*. Similar publishing provisions apply to construction projects projected to cost more than $200,000 for counties, municipalities, and other political subdivisions. *See* Section 255.0525(2), F.S.
[40] Sections 215.473(1)(v) and 215.4725(1)(f), F.S.
[41] *See* s. 287.135, F.S.
[42] The Israel List is a list of companies that boycott Israel that is compiled by the State Board of Administration. Section 215.4725(2), F.S.
[43] The term “boycott of Israel” means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a

Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria are prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity[44] for goods or services of $1 million or more.[45] In addition, any contract with an agency or local governmental entity for goods or services of $1 million or more, entered into or renewed on or after specified dates, must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification or is engaged in a boycott of Israel or has been placed on the Scrutinized Companies that Boycott Israel List or the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria.[46]

A company that submits a bid or proposal for, or that otherwise proposes to enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more must certify that it is not participating in a boycott of Israel, on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.[47] The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.[48]

If an agency or local governmental entity determines that a company has submitted a false certification, it must provide the company with written notice, and the company has 90 days to respond in writing to such determination.[49] If the company fails to demonstrate that the determination of false certification was made in error, the awarding body must bring a civil action against the company.[50] If a civil action is brought and the court determines that the company submitted a false certification, the company must pay all reasonable attorney fees and costs (including costs for investigations that led to the finding of false certification).[51] In addition, a civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted must be imposed.[52] The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false

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discriminatory manner. A statement by a company that it is participating in a boycott of Israel or in Israeli-controlled territories, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel. Sections 287.135(1)(b) and 215.4725(1)(a), F.S.

[44] The term "local governmental entity" means a county, municipality, special district, or other political subdivision of the state. Section 287.135(1)(d), F.S.

[45] Section 287.135(2), F.S.

[46] Section 287.135(3), F.S.

[47] Section 287.135(5), F.S.

[48] *Id.*

[49] Section 287.135(5)(a), F.S.

[50] *Id.*

[51] *Id.*

[52] Section 287.135(5)(a)1., F.S.

certification.[53] A civil action to collect the penalties must commence within three years after the date the false certification is submitted.[54]

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List if all of the following occur:

- The boycott of Israel was initiated before October 1, 2016.
- The company certifies in writing that it has ceased its boycott of Israel.
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations[55] and to refrain from engaging in any new scrutinized business operations.[56]

An agency or local governmental entity is also authorized to make an exception to the contracting prohibition for a company on the Israel List if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.[57]

III. Effect of Proposed Changes:

Section 1 amends section 287.135, F.S., to prohibit a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of any amount, rather than only contracts of $1 million or more.

The bill updates the time frames for contracts with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed after October 1, 2016, through June 30, 2016, and after July 1, 2018, that must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria.

[53] Section 287.135(5)(a)2., F.S.
[54] Section 287.135(5)(b), F.S.
[55] Section 215.473(1)(u), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.
[56] Section 287.135(4), F.S.
[57] *Id.*

The bill requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The bill authorizes an agency or local governmental entity to make a case-by-case exception to the contracting prohibition for a company on the Scrutinized Companies that Boycott Israel List for contracts for goods or services of any amount based on the same conditions currently applicable to contracts of $1 million or more.

The bill requires a company that submits a bid or proposal, or that otherwise proposes to enter into or renew a contract with an agency or local governmental entity, for goods or services of any amount to certify that it is not participating in a boycott of Israel.

The bill preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services for any amount with a company that has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

Section 2 provides that the bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The U.S. Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,[58] maintain a military,[59] enter into treaties and other international agreements,[60] regulate foreign commerce,[61] and to hear cases involving foreign states and citizens.[62] These grants of power have been interpreted to

[58] Section 8, Art. I, U.S. Constitution.
[59] *Id.*
[60] Section 2, Art. II, U.S. Constitution.
[61] Section 8, Art. I, U.S. Constitution.
[62] Section 2, Art. III, U.S. Constitution.

grant the federal government the exclusive power to act in the area of foreign affairs.[63] When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid.[64]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Companies that choose to boycott Israel may not be eligible to contract with state and local governmental entities in Florida.

C. Government Sector Impact:

State agencies and local governments will not be permitted to contract with certain companies that boycott Israel in certain instances. This may eliminate contractors that may otherwise have been a less expensive source for certain goods and services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.135 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

[63] *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (Stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

[64] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

By Senator Brandes

24-00797-18 2018780__

1 A bill to be entitled
2 An act relating to the prohibition against contracting
3 with scrutinized companies; amending s. 287.135, F.S.;
4 prohibiting a company that is on the Scrutinized
5 Companies that Boycott Israel List or that is engaged
6 in a boycott of Israel from bidding on, submitting a
7 proposal for, or entering into or renewing a contract
8 with an agency or local governmental entity for goods
9 or services of any amount; providing exceptions;
10 requiring such contracts entered into or renewed on or
11 after July 1, 2018, to include a provision authorizing
12 termination of the contract under specified
13 circumstances; requiring a company to provide a
14 specified certification before submitting a bid or
15 proposal for or entering into or renewing such
16 contracts; providing for preemption of agency or local
17 governmental entity ordinances and rules involving
18 such contracts; conforming provisions to changes made
19 by the act; providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Section 287.135, Florida Statutes, is amended to
24 read:
25 287.135 Prohibition against contracting with scrutinized
26 companies.—
27 (1) In addition to the terms defined in ss. 287.012 and
28 215.473, as used in this section, the term:
29 (a) “Awarding body” means, for purposes of state contracts,

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30 an agency or the department, and for purposes of local
31 contracts, the governing body of the local governmental entity.
32 (b) “Boycott of Israel” has the same meaning as defined in
33 s. 215.4725.
34 (c) “Business operations” means, for purposes specifically
35 related to Cuba or Syria, engaging in commerce in any form in
36 Cuba or Syria, including, but not limited to, acquiring,
37 developing, maintaining, owning, selling, possessing, leasing,
38 or operating equipment, facilities, personnel, products,
39 services, personal property, real property, military equipment,
40 or any other apparatus of business or commerce.
41 (d) “Local governmental entity” means a county,
42 municipality, special district, or other political subdivision
43 of the state.
44 (2) A company is ineligible to, and may not, bid on, submit
45 a proposal for, or enter into or renew a contract with an agency
46 or local governmental entity for goods or services of ~~$1 million~~
47 ~~or more if at the time of bidding or submitting a proposal for a~~
48 ~~new contract or renewal of an existing contract, the company~~:
49 (a) Any amount if, at the time of bidding on, submitting a
50 proposal for, or entering into or renewing such contract, the
51 company is on the Scrutinized Companies that Boycott Israel
52 List, created pursuant to s. 215.4725, or is engaged in a
53 boycott of Israel; or
54 (b) One million dollars or more if, at the time of bidding
55 on, submitting a proposal for, or entering into or renewing such
56 contract, the company:
57 1. Is on the Scrutinized Companies with Activities in Sudan
58 List or the Scrutinized Companies with Activities in the Iran

Petroleum Energy Sector List, created pursuant to s. 215.473; or

2.~~(c)~~ Is engaged in business operations in Cuba or Syria.

(3)(a) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after:

1.~~(a)~~ July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

2.~~(b)~~ July 1, 2012, through September 30, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

3.~~(c)~~ October 1, 2016, through June 30, 2018, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company:

a.~~1.~~ Is found to have submitted a false certification as provided under subsection (5);

b.~~2.~~ Has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel;

c.~~3.~~ Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

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Activities in the Iran Petroleum Energy Sector List; or

d.~~4.~~ Has been engaged in business operations in Cuba or Syria.

4. July 1, 2018, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(b) Any contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on ~~the Scrutinized Companies that Boycott Israel List,~~ the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company engaged in ~~with~~ business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of $1 million or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or

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117 renew a contract for goods or services of any amount, under the
118 conditions set forth in paragraph (a) or the conditions set
119 forth in paragraph (b):
120 (a)1. With respect to a company on the Scrutinized
121 Companies with Activities in Sudan List or the Scrutinized
122 Companies with Activities in the Iran Petroleum Energy Sector
123 List, all of the following occur:
124 a. The scrutinized business operations were made before
125 July 1, 2011.
126 b. The scrutinized business operations have not been
127 expanded or renewed after July 1, 2011.
128 c. The agency or local governmental entity determines that
129 it is in the best interest of the state or local community to
130 contract with the company.
131 d. The company has adopted, has publicized, and is
132 implementing a formal plan to cease scrutinized business
133 operations and to refrain from engaging in any new scrutinized
134 business operations.
135 2. With respect to a company engaged in business operations
136 in Cuba or Syria, all of the following occur:
137 a. The business operations were made before July 1, 2012.
138 b. The business operations have not been expanded or
139 renewed after July 1, 2012.
140 c. The agency or local governmental entity determines that
141 it is in the best interest of the state or local community to
142 contract with the company.
143 d. The company has adopted, has publicized, and is
144 implementing a formal plan to cease business operations and to
145 refrain from engaging in any new business operations.

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146 3. With respect to a company on the Scrutinized Companies
147 that Boycott Israel List, all of the following occur:
148 a. The boycott of Israel was initiated before October 1,
149 2016.
150 b. The company certifies in writing that it has ceased its
151 boycott of Israel.
152 c. The agency or local governmental entity determines that
153 it is in the best interest of the state or local community to
154 contract with the company.
155 d. The company has adopted, has publicized, and is
156 implementing a formal plan to cease scrutinized business
157 operations and to refrain from engaging in any new scrutinized
158 business operations.
159 (b) One of the following occurs:
160 1. The local governmental entity makes a public finding
161 that, absent such an exemption, the local governmental entity
162 would be unable to obtain the goods or services for which the
163 contract is offered.
164 2. For a contract with an executive agency, the Governor
165 makes a public finding that, absent such an exemption, the
166 agency would be unable to obtain the goods or services for which
167 the contract is offered.
168 3. For a contract with an office of a state constitutional
169 officer other than the Governor, the state constitutional
170 officer makes a public finding that, absent such an exemption,
171 the office would be unable to obtain the goods or services for
172 which the contract is offered.
173 (5) At the time a company submits a bid or proposal for a
174 contract or before the company enters into or renews a contract

175 with an agency or local governmental entity for goods or
176 services of $1 million or more, the company must certify that
177 the company is not ~~participating in a boycott of Israel,~~ on the
178 Scrutinized Companies with Activities in Sudan List or the
179 Scrutinized Companies with Activities in the Iran Petroleum
180 Energy Sector List and~~, or~~ that it does not have business
181 operations in Cuba or Syria. At the time a company submits a bid
182 or proposal for a contract or before the company enters into or
183 renews a contract with an agency or local governmental entity
184 for goods or services of any amount, the company must certify
185 that the company is not participating in a boycott of Israel.
186 (a) If, after the agency or the local governmental entity
187 determines, using credible information available to the public,
188 that the company has submitted a false certification, the agency
189 or local governmental entity shall provide the company with
190 written notice of its determination. The company shall have 90
191 days following receipt of the notice to respond in writing and
192 to demonstrate that the determination of false certification was
193 made in error. If the company does not make such demonstration
194 within 90 days after receipt of the notice, the agency or the
195 local governmental entity shall bring a civil action against the
196 company. If a civil action is brought and the court determines
197 that the company submitted a false certification, the company
198 shall pay the penalty described in subparagraph 1. and all
199 reasonable attorney fees and costs, including any costs for
200 investigations that led to the finding of false certification.
201 1. A civil penalty equal to the greater of $2 million or
202 twice the amount of the contract for which the false
203 certification was submitted shall be imposed.

204 2. The company is ineligible to bid on any contract with an
205 agency or local governmental entity for 3 years after the date
206 the agency or local governmental entity determined that the
207 company submitted a false certification.
208 (b) A civil action to collect the penalties described in
209 paragraph (a) must commence within 3 years after the date the
210 false certification is submitted.
211 (6) Only the agency or local governmental entity that is a
212 party to the contract may cause a civil action to be brought
213 under this section. This section does not create or authorize a
214 private right of action or enforcement of the penalties provided
215 in this section. An unsuccessful bidder, or any other person
216 other than the agency or local governmental entity, may not
217 protest the award of a contract or contract renewal on the basis
218 of a false certification.
219 (7) This section preempts any ordinance or rule of any
220 agency or local governmental entity involving public contracts
221 for goods or services of:
222 (a) One million dollars ~~Of $1 million~~ or more with a
223 company engaged in scrutinized business operations.
224 (b) Any amount with a company that has been placed on the
225 Scrutinized Companies that Boycott Israel List or is engaged in
226 a boycott of Israel.
227 (8) The contracting prohibitions in this section applicable
228 to companies on the Scrutinized Companies with Activities in
229 Sudan List or the Scrutinized Companies with Activities in the
230 Iran Petroleum Energy Sector List or to companies engaged in
231 business operations in Cuba or Syria become inoperative on the
232 date that federal law ceases to authorize the states to adopt

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233 and enforce such contracting prohibitions.

234 Section 2. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL
38th District

February 8, 2018

Senator David Simmons, Chair
Appropriations Subcommittee on General Government
408 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Simmons,

Today, Thursday, February 8th, 2018, during the meeting of the Appropriations Subcommittee on General Government, I intended to vote YES on SB780: Prohibition against Contracting with Scrutinized Companies, but accidentally voted NO. I respectfully request that the record reflect my intentions of a YES vote for SB780.

Kindly,

Senator Daphne Campbell
Senate District 38

REPLY TO:
❐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
❐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Appropriations Subcommittee on General Government
ITEM: SB 780
FINAL ACTION: Favorable
MEETING DATE: Thursday, February 8, 2018
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Broxson						
	X	Campbell						
X		Gainer						
		Garcia						
X		Mayfield						
X		Powell						
X		Rodriguez						
X		Taddeo						
	X	Torres						
X		Bean, VICE CHAIR						
X		Simmons, CHAIR						
8	2	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES:
FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

REPORTING INSTRUCTION: Publish
02092018.0839

The Florida Senate

Committee Agenda Request

To: Senator David Simmons,
Appropriations Subcommittee on
General Government

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #780**, relating to a **Prohibition Against Contracting with Scrutinized Companies** be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 General Government

BILL: SB 954

INTRODUCER: Senator Passidomo

SUBJECT: State Employees' Prescription Drug Program

DATE: February 7, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	McVaney/Davis	Betta	AGG	**Recommend: Favorable**
3.			AP	

I. Summary:

SB 954 directs the Department of Management Services to implement formulary management cost-saving measures in the State Employees' Prescription Drug Program. The cost-saving measures may exclude prescription drugs but may not restrict access to the most clinically appropriate, clinically effective, lowest net-cost prescription drugs. The measures must also permit a specified prescribing practitioner to indicate when an otherwise excluded drug is medically necessary and cannot be substituted.

The bill removes a provision authorized in ch. 99-255, L.O.F., which prohibits the implementation of a prior authorization program or a restricted formulary program on a non-HMO enrollee's access to certain prescription drugs.

Implementation of a closed formulary for the State Employees' Prescription Drug Program is expected to result in an indeterminate but significant increase in prescription drug rebates paid into the State Employees Health Insurance Trust Fund. The implementation is expected to decrease pharmaceutical claims paid from the State Employee Health Insurance Trust Fund by an indeterminate but significant amount.

The bills takes effect January 1, 2019.

II. Present Situation:

State Group Health Insurance Program Background

The State Group Health Insurance Program (state program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS). The state program is an optional benefit for all state employees, including all state agencies, state universities, the court system, and the Legislature. The state

program includes health, life, dental, vision, disability, and other supplemental insurance benefits.

The state program typically makes program changes on a plan year basis, January 1 through December 31. Benefit changes are subject to approval of the Legislature. Typically, the Legislature includes direction to the DMS that the benefits provided in the current benefit documents continue during the next plan year. This statement is used by the Legislature to resolve issues at impasse between the State of Florida and its unionized employees.

Health Plan Options

The state program provides employees with two types of health plans: health maintenance organizations (HMOs) and preferred provider organizations (PPOs). The PPO is the statewide, self-insured health plan administered by Florida Blue, whose current contract is effective from the 2015 through 2018 plan years. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, managing customer service, utilization review, and case management functions.

The standard health maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with multiple statewide and regional HMOs.[1] Currently, there are four HMO vendors participating who were awarded contracts with initial terms of three years (January 1, 2018, through December 2020) with annual renewal options for up to three additional years. Only one HMO vendor is available in each county. Three of the HMOs vendors (Aetna, AvMed, and United Health Care) are under contract using a self-insured financial model and one HMO (Capital Health Plan) is under contract using a fully-insured model.

State Prescription Drug Plan

The state program also has a pharmacy benefit for members of the plan. The program covers all federal legend drugs (open formulary) for covered medical conditions, and employs very limited utilization review and clinical review for traditional or specialty prescription drugs. Specialty drugs are high-cost prescription medications used to treat complex, chronic conditions such as cancer, rheumatoid arthritis and multiple sclerosis. Specialty drugs often require special handling (e.g., refrigeration during shipping) and administration (such as injection or infusion).

The DMS has contracted with CVS Caremark as the pharmacy benefits manager (PBM) to administer the State Employees' Self-insured Prescription Drug Program pursuant to s. 110.12315, F.S. The table below shows the financial impact of the prescription drug program.

(in $ millions)	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**
PPO-PBM Rebates	$56.4	$58.1	$59.9	$61.8	$63.7
HMO-PBM Rebates	$50.1	$53.3	$56.8	$60.6	$64.6
Total Rebates	$106.5	$111.4	$116.7	$122.4	$128.3
PPO Pharmacy Claims	$364.6	$409.9	$470.8	$542.4	$624.9
HMO Pharmacy Claims	$295.4	$338.0	$401.9	$479.8	$572.4

[1] Department of Management Services, MyBenefits, *2018 Health Plan Options,* https://www.mybenefits.myflorida.com/health/2018_benefit_options/2018_health_plan_options (last visited Jan 22, 2018). The current contracted HMOs are Aetna, AvMed, Capital Health Plan, and United Healthcare.

Total Pharmacy Claims	$660.0	$747.9	$872.7	$1,022.2	$1,197.3

The cost to a member for a drug varies based on the health plan (standard plan or high deductible plan) in which a member is enrolled and on the type of drug (generic, a preferred brand-name, or a non-preferred brand-name).[2] The following chart depicts the member's cost.

Copayments or Coinsurance for State Employee Prescriptions and 90-Day Maintenance Medications[3]						
	Standard PPO[4] Standard HMO			**High Deductible HMO High Deductible PPO**		
	Retail (30 day)	***Mail Order (90 days)***	***Retail (90 days)***	***Retail 30 day***	***Mail Order 90 day***	***Retail 90 day***
Generic	$7	$14		30%		
Preferred Brand Name[5]	$30	$60		30%		
Non-Preferred Brand Name	$50	$100		30%		

The health plan currently covers all federal legend drugs[6] (open formulary) for covered medical conditions and provides very limited utilization review and clinical review for traditional or specialty prescription drugs.

The current health plan also covers compounded medications. Compounded medications combine, mix, or alter the ingredients of one or more drugs or products to create another drug or product. The plan only covers the federal legend drug ingredient of a compounded medication when all of the following criteria are met:

- The compounded medication is not used in place of a commercially available federal legend drug in the same strength and formulation, unless medically necessary;
- The compounded medication is specifically produced for use by a covered person to treat a covered condition; and

[2] Department of Management Services, *MyBenefits, Prescription Drug Plan,* https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan (last visited Jan. 18, 2018).

[3] Maintenance medications are considered those prescriptions commonly used to treat conditions that are considered chronic or long-term. These conditions require regular or on-going use of the drugs. Some examples include those medications that treat heart disease, diabetes, asthma, or heart disease.

[4] Members enrolled in a state employee PPO plan must fill their maintenance medications through the mail order pharmacy or a participating 90-day retail pharmacy after three fills at a 30-day retail pharmacy. *See* Department of Management Services, Prescription Drug Plan https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan (last visited Jan. 18, 2018).

[5] Members, who request a preferred brand-name drug when a generic is available, must pay the difference between the generic cost and the preferred name-brand cost, plus the appropriate copayment or coinsurance. If the prescribing physician writes on the prescription that the preferred brand is medically necessary or to "dispense as written" and the reason, the member pays only the appropriate brand copayment or coinsurance. *See* Department of Management Services, *Frequently Asked Questions,* https://www.mybenefits.myflorida.com/health/resources/faq_s/frequently_asked_questions_prescription_drug_plan (last visited Jan. 19, 2018).

[6] A legend drug is defined as any drug approved by the U.S. Food and Drug Administration and that are required by federal or state law to be dispensed to the public only on prescription of a licensed physician or other licensed provider.

- The compounded medication, including all sterile compounded products, is made in compliance with ch. 465, F.S., the Florida Pharmacy Act.[7]

Currently, the law prohibits the program from implementing a restricted formulary or prior authorization process on the non-HMO component of the State employees' Prescription Drug Program.[8]

National health spending on prescription drugs is projected to peak in 2018 at 7.6 percent, as fewer brand-name drugs are expected to lose patent protection and is expected to grow at an average of 6.3 percent a year in the private marketplace for 2016 through 2025.[9]

Formulary Development

Formularies are developed by a pharmacy and therapeutics (P&T) committee or an equivalent entity within health plans, PBMs, hospitals, government agencies, and Medicare and Medicaid programs. The P&T committee determines which medications and related products should be listed on the formulary. The P&T committee is composed of primary care and specialty care physicians, pharmacists and other professionals in the health care field and can include nurses, legal experts, and administrators.[10] In order to keep up to date on newly approved medications from the United States Food and Drug Administration the P&T committee should meet regularly to review newly released drugs and classes of drugs. As part of that review process, the P&T committee reviews some or all of the following:

- Medical and clinical literature including clinical trials and treatment guidelines, comparative effectiveness reports, pharmacoeconomic studies and outcomes data;
- FDA-approved prescribing information and related FDA information including safety data;
- Relevant information on use of medications by patients and experience with specific medications;
- Current therapeutic use and access guidelines and the need for revised or new guidelines;
- Economic data, such as total health care costs, including drug costs;
- Drug and other health care cost data (not all P&T committees review drug specific economic data); and
- Health care provider recommendations.[11]

Florida uses a P&T committee in its Medicaid program.[12] Membership on its committee includes physicians, pharmacists, and a consumer. The Medicaid preferred drug list is a listing of cost-effective, safe, and clinically efficient medications for each of the therapeutic classes on the list

[7] Department of Management Services, *My Benefits, Frequently Asked Questions – Prescription Drug Plan,* https://www.mybenefits.myflorida.com/health/resources/faq_s/frequently_asked_questions_prescription_drug_plan (last visited Jan. 19, 2018).
[8] Ch. 99-255, s. 8, Laws of Fla.
[9] Centers for Medicare and Medicaid Services, National Health Expenditure Projections 2016-2025, *Forecast Summary,* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/proj2016.pdf (last visited Jan. 19, 2018).
[10] Academy of Managed Care Pharmacy, *Formulary Management*, http://www.amcp.org/WorkArea/DownloadAsset.aspx?id=9298 (last visited Jan. 19, 2018).
[11] *Id.*
[12] Section 409.91195, F.S.

and is posted on the Agency for Health Care Administration's website.[13] Medicaid recipients may appeal any drug formulary decisions using the Medicaid fair hearing process.[14]

III. Effect of Proposed Changes:

Section 1 directs the DMS to implement formulary management cost saving measures in the State Employees' Prescription Drug Program as established in s. 110.12315, F.S. The measures must require that the prescription drugs be subject to formulary inclusion or exclusion, but may not restrict access to the most clinically appropriate, clinically effective, and lowest net-cost prescription drugs.

The formulary program must allow an excluded drug to be included if a physician, an advanced registered nurse practitioner, or a physician assistant prescribing a pharmaceutical clearly states that the excluded drug is medically necessary and cannot be substituted.

According to the DMS, the CVS/Caremark formulary for 2018 covers the majority of generic drugs on the market as well as approximately 5,400 brand name drugs (preferred, non-preferred, and specialty). The 2019 formulary also excludes 159 drugs, test strips, insulin syringes, and pen needles that will require prior authorization or clinical review before those items will be covered.[15] By October of each year, CVS/Caremark announces the therapeutic classes and the specific drugs that will be affected by formulary changes.

Section 2 repeals s. 8 of ch. 99-255, L.O.F., which had prohibited the use of a prior authorization program or a restricted formulary for members in the PPO Plan.

Section 3 provides that the bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[13] *See Florida Medicaid Preferred Drug List (PDL),* http://ahca.myflorida.com/medicaid/Prescribed_Drug/pharm_thera/fmpdl.shtml (last visited Jan. 19, 2018).
[14] Section 409.91195(11), F.S.
[15] Department of Management Services, *Senate Bill 954 Analysis* (November 27, 2017).

D. Other Constitutional Issues:

The separation-of-powers doctrine prevents the Legislature from delegating its constitutional duties. An invalid delegation of authority violates the principle of separation of powers mandated in the Florida Constitution. When delegating a regulatory responsibility, the Legislature must provide the agency with adequate standards and guidelines. The executive branch "must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed."

In Askew v. Cross Key Waterways, the Florida Supreme Court acknowledged that "[w]here the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [separation of powers] doctrine . . . ." If legislation lacks guidelines, and "neither the agency nor the courts can determine whether the agency is carrying out the intent of the Legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law."

The bill grants authority to the DMS or its PBM vendor to determine whether a prescription drug and supply will be available under the State Employee Prescription Drug Program. The bill does not specify any standards or policies to guide the DMS or the PBM in excluding or including the prescription drugs and supplies.

This may be more problematic in that health insurance coverage is typically a term and condition of employment and a mandatory subject of collective bargaining. Under Florida law, the Legislature is the final arbiter in the collective bargaining process. Under this bill, management (DMS) can decide unilaterally (without consultation or negotiation with the collective bargaining representatives) to exclude particular prescription drugs from the state program even though the Legislature has deemed those drugs included within the state program.

In order to ensure the formulary is implemented within constitutional parameters, the Legislature may consider establishing standards and guidelines for the DMS and the PBM in determining the exclusion or inclusion of prescribed drugs and supplies. In addition, to address the potential collective bargaining process issues, the Legislature may consider establishing a process that allows legislative oversight or approval prior to implementation of the closed formulary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact to the private sector is twofold. First, implementation of a closed formulary will require the substitution of one drug or supply for another. This will affect the

members of the state plan. If CVS/Caremark's 2018 Standard Control Formulary[16] were implemented for the state program during the current plan year, up to 84,043 non-specialty prescriptions and 513 specialty prescriptions would be affected unless the prescriber indicates the drug is medically necessary or engages the prior authorization process. In terms of member impacts, 31,047 members of the state program would be affected.

The second impact will fall upon the pharmaceutical industry. Implementation of a closed formulary presumably gives the PBM a stronger bargaining position when negotiating rebates with the pharmaceutical industry. A pharmaceutical supplier may agree to pay higher rebates to ensure its drugs remain available within CVS/Caremark's formulary.

C. Government Sector Impact:

Implementation of a closed formulary in the State Employee Prescription Drug Program will result in indeterminate savings on pharmacy costs. The magnitude of the potential savings is unknown given the physician's ability to prescribe outside the formulary if the drug is medically necessary and cannot be substituted.

Implementation of a closed formulary may result in greater PBM rebates generated as revenues to the State Employee Health Insurance Trust Fund. The magnitude of the potential new rebates is unknown but expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.12315 of the Florida Statutes.

This bill repeals section 8 of chapter 99-255, Laws of Florida.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

[16] CVS/Caremark, *Prescribing Guide – Standard Control 2018* (January 2018) https://www.caremark.com/portal/asset/prescribing_guide.pdf (last visited Jan. 19, 2018).

B. Amendments:

None.

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

By Senator Passidomo

28-00994A-18 2018954__

A bill to be entitled

An act relating to the state employees' prescription drug program; amending s. 110.12315, F.S.; requiring the Department of Management Services to implement formulary management cost-saving measures; providing requirements for such measures; amending ch. 99-255, Laws of Florida; removing a provision that prohibits the department from implementing a restricted prescription drug formulary or prior authorization program in the state employees' prescription drug program; providing an effective date.

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

Section 1. Subsection (9) is added to section 110.12315, Florida Statutes, to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according to the terms and conditions of the plan as established by the relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(9) The department shall implement formulary management cost-saving measures. Such measures must require prescription drugs to be subject to formulary inclusion or exclusion and may not restrict access to the most clinically appropriate, clinically effective, and lowest net-cost prescription drugs. However, excluded drugs may be available for inclusion if a physician, an advanced registered nurse practitioner, or a

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

28-00994A-18 2018954__

physician assistant prescribing a pharmaceutical clearly states that the excluded drug is medically necessary and cannot be substituted.

Section 2. Section 8 of Chapter 99-255, Laws of Florida, is amended to read:

~~Section 8. The Department of Management Services shall not implement a prior authorization program or a restricted formulary program that restricts a non-HMO enrollee's access to prescription drugs beyond the provisions of paragraph (b) related specifically to generic equivalents for prescriptions and the provisions in paragraph (d) related specifically to starter dose programs or the dispensing of long-term maintenance medications. The prior authorization program expanded pursuant to section 8 of the 1998-1999 General Appropriations Act is hereby terminated. If this section conflicts with any General Appropriations Act or any act implementing a General Appropriations Act, the Legislature intends that the provisions of this section shall prevail. This section shall take effect upon becoming law.~~

Section 3. This act shall take effect January 1, 2019.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/18
Meeting Date

SB 954
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 954

Name Tami Fillyaw

Job Title Director, Division of State Group Insurance

Address 4050 Esplanade Way
Street

Phone (850) 487-7001

Tallahassee FL 32311
City State Zip

Email tami.fillyaw@dms.myflorida.com

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

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

Representing Department of Management Services

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Feb. 8, 2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 954

Meeting Date — Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: SB 954

Name: Meredith Stanfield

Job Title: Legislative Affairs Director

Address: 4050 Esplanade Way (Street)

Tallahassee (City), FL (State), 32312 (Zip)

Phone: 850-487-7001

Email: meredith.stanfield@dms.myflorida.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing: Department of Management Services

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

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

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 23, 2018

I respectfully request that **Senate Bill #954**, relating to State Employees' Prescription Drug Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

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 General Government

BILL: PCS/CS/SB 1412 (617640)

INTRODUCER: Appropriations Subcommittee on General Government; Judiciary Committee and Senator Simmons

SUBJECT: Office of the Judges of Compensation Claims

DATE: February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Fav/CS**
2.	Davis	Betta	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1412 requires the salary of a judge of compensation claims to be equal to the salary of a county court judge, which is $151,822. Currently, a judge of compensation claims is paid $124,564.20 annually, $27,257.80 less than a county court judge is paid. The bill sets the salary of the Deputy Chief Judge of Compensation Claims at $1,000 more than the salary of a judge of compensation claims.

The cost to implement this bill is approximately $1.2 million annually from the Workers' Compensation Administration Trust Fund. The bill appropriates $1,159,440 in recurring funds from the Operating Trust Fund to the Division of Administrative Hearings (costs to administer the operations of the Office of the Judges of Compensation Claims are funded by a transfer of funds from the Workers' Compensation Administration Trust Fund to this Operating Trust Fund) and authorizes associated salary rate of 870,392 to implement the provisions in the bill.

The bill takes effect July 1, 2018.

II. Present Situation:

Office of the Judges of Compensation Claims

The judges of compensation claims have exclusive jurisdiction over workers' compensation cases.[1] When an employer disputes an employee's claim for workers' compensation, the employee may initiate litigation of the matter by filing a petition with the Office of the Judges of Compensation Claims (OJCC). Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.[2] Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.[3] Even after a petition is filed, a workers' compensation dispute may be resolved through mediation[4] or arbitration.[5] Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.[6] If mediation is unsuccessful in resolving the claim, a judge of compensation claims may hold a hearing to resolve the matter.[7] A final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Upon the conclusion of the hearing, the judge's order may be appealed to the First District Court of Appeal, which has sole appellate jurisdiction.[8]

The OJCC is comprised of 31 judges of compensation claims positions and headed by the Deputy Chief Judge, who reports to the director and Chief Judge of the Division of Administrative Hearings (DOAH). The DOAH Chief Judge acts as the OJCC's "agency head for all purposes."[9]

Judges of compensation claims are nominated by a statewide nominating commission and appointed by the Governor to a four-year term. The Governor may reappoint a judge to successive four-year terms and may remove a judge for cause during any term.[10]

Judges of compensation claims are paid $124,564.20 annually, except the Deputy Chief Judge is paid $127,422.12 annually.[11]

These salaries are roughly equivalent to those of administrative law judges (ALJs), who preside at the DOAH. The standard ALJ salary is $123,070 per year, while Senior ALJs are paid

---

[1] *See Sanders v. City of Orlando*, 997 So. 2d 1089, 1094 (Fla. 2008).
[2] Section 440.192(1), F.S.
[3] Section 440.192(8), F.S.
[4] *See* s. 440.25, F.S.
[5] *See* s. 440.1926, F.S.
[6] Section 440.25, F.S.
[7] *See* s. 440.25(4), F.S.
[8] Section 440.271, F.S.
[9] Section 440.45(1)(a), F.S. The DOAH and the OJCC exist within the Department of Management Services, but the department may not direct DOAH or the OJCC in any way. Instead the department must "provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings." Section 440.45(1)(a), F.S.
[10] *Id.*
[11] Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).

$124,320 per year, and the Deputy Chief ALJ is paid $125,820 per year. The Chief Judge determines these salaries, except for his own, which is $131,409.36 and was set by the Florida Cabinet upon his hiring.[12]

Until January 1, 1994, the salary of the judges of compensation claims was linked to the salary of Circuit Court judges, who are now paid $160,688.04 annually.[13] But since 1994, the salary of judges of compensation claims has increased only when the Legislature has appropriated general state-employee salary increases. The salaries and other expenses of the OJCC are paid from the Workers' Compensation Administration Trust Fund.[14]

Workers' Compensation Administration Trust Fund

Section 440.50, F.S., creates the Workers' Compensation Administration Trust Fund. The revenue sources for this fund are fees, licenses and taxes as provided by ch. 440, F.S., including an assessment paid by carriers writing workers' compensation insurance in the state and self-insurers. This fund pays for expenses related to the administration of ch. 440, F.S. The fund is administered by the Division of Workers' Compensation within the Department of Financial Services.

III. Effect of Proposed Changes:

The bill requires a judge of compensation claims be paid "a salary equal to that of a county court judge," which is currently $27,257.80 higher than the salary of a judge of compensation claims. County court judges are currently paid $151,822 per year. The salary of the Deputy Chief Judge of Compensation Claims, however, is set by the bill at $1,000 more than that of a judge of compensation claims. Accordingly, if the salary of the county court judges rises or falls, so will that of the judges of compensation claims.

The bill does not appear to affect the salary of the Chief Judge of the DOAH. Though the Chief Judge serves as the "agency head" of the OJCC, he is not listed as a judge of compensation claims on the OJCC's website, nor does the statutory description of his position include service as a judge of compensation claims.[15] Under the bill, the salary of the current DOAH Chief Judge will be approximately $21,413 less than that of the Deputy Chief Judge of Compensation Claims.

The bill also appropriates $1,159,440 in recurring funds from the Operating Trust Fund to the DOAH and authorizes associated salary rate of 870,392 to implement the provisions in the act related to the OJCC salary increase.

The bill takes effect July 1, 2018.

---

[12] Conversation with Cindy Ardoin, Budget Officer, Florida Division of Administrative Hearings (Jan. 22, 2018).
[13] Ch. 2017-88, s. 17, Laws of Fla.
[14] Div. of Admin. Hearings, *Analysis of Senate Bill 1412* (Jan. 4, 2018) (on file with the Senate Committee on Judiciary).
[15] Office of the Judges of Compensation Claims, *Judges of Compensation Claims,* https://www.jcc.state.fl.us/JCC/judges/ (last visited Jan. 22, 2018).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Workers' Compensation Administration Trust Fund's main revenue source is an assessment on Florida employers. The Chief Financial Officer (CFO) sets the assessment rate for each year. As of January 1, 2018, the assessment rate is set at 0.97 percent. Although there are funds available in the trust fund to support the bill, the assessment percentage is adjusted annually by the CFO to ensure the trust fund remains solvent.

C. Government Sector Impact:

The bill requires judges of compensations claims be paid a salary equal to that of a county court judge. The Deputy Chief Judge is to be paid $1,000 more than that of a judge of compensation claims. Currently, the OJCC is comprised of 31 judges of compensation claims positions and a Deputy Chief Judge. The bill effectively increases the salary of each judge of compensation claims by $27,257.80 and by $25,399.88 for the Deputy Chief Judge of the OJCC. Implementation of the bill is expected to increase salary and benefits expenditures from the Workers' Compensation Administration Trust Fund by $1,159,440 annually. Funds are appropriated from the Operating Trust Fund to the DOAH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 440.45 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 8, 2018:
The committee substitute provides an appropriation to the Division of Administrative Hearings to implement the bill.

CS by Judiciary on January 25, 2018:
The committee substitute removed the provision of the bill that would have increased the initial term of a judge of compensation claims to six years, which is two more than under current law.

B. Amendments:

None.

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

836202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simmons) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 20 - 22
4 and insert:
5 claims.
6 Section 2. For the 2018-2019 fiscal year, the sum of
7 $1,159,440 in recurring funds from the Operating Trust Fund is
8 appropriated to the Division of Administrative Hearings and
9 associated salary rate of 870,392 is authorized for the purpose
10 of implementing this act.

836202

11
12 ================= T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete lines 6 - 7
15 and insert:
16 providing an appropriation; providing an

By the Committee on Judiciary; and Senator Simmons

590-02436-18 20181412c1

1 A bill to be entitled
2 An act relating to the Office of the Judges of
3 Compensation Claims; amending s. 440.45, F.S.;
4 specifying the salaries of full-time judges of
5 compensation claims and the Deputy Chief Judge;
6 requiring salaries to be paid out of the Workers'
7 Compensation Administration Trust Fund; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (f) is added to subsection (2) of
13 section 440.45, Florida Statutes, to read:
14 440.45 Office of the Judges of Compensation Claims.—
15 (2)
16 (f) All full-time judges of compensation claims shall
17 receive a salary equal to that of a county court judge. The
18 Deputy Chief Judge shall receive a salary of $1,000 more per
19 year than the salary paid to a full-time judge of compensation
20 claims. The salaries for the judges of compensation claims must
21 be paid out of the Workers' Compensation Administration Trust
22 Fund established under s. 440.50.
23 Section 2. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/8/18
Meeting Date

CS/SB 1412
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1412 (W/C JUDGES

Name PAUL M. ANDERSON

Job Title CHAIR

Address 1584 METROPOLITAN BLVD.
Street

TALL. FL. 32308
City State Zip

Phone (850) 894-3000

Email paul@becausejustice matters.com

Speaking: [x] For [ ] Against [ ] Information

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

Representing W/C SECTION of the FLORIDA BAR

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

Lobbyist registered with Legislature: [ ] Yes [x] 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 the Senator or Senate Professional Staff conducting the meeting)

2/8
Meeting Date

1412
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic JUDGES OF COMP CLAIMS

Name DONOVAN BROWN

Job Title VP, SUSKEY CONSULTING

Address ______________________ Phone 530.815.6010
Street

______________________ Email donovan@suskeyconsulting.com
City State Zip

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

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

Representing ASSOCIATED INDUSTRIES OF FLORIDA

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

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

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: January 26, 2018

I respectfully request that **Senate Bill 1412**, relating to Office of the Judges of Compensation Claims, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

CourtSmart Tag Report

Room: SB 301 **Case No.:** **Type:**
Caption: Appropriations Subcommittee on General Government **Judge:**

Started: 2/8/2018 12:30:57 PM
Ends: 2/8/2018 1:52:12 PM Length: 01:21:16

12:32:04 PM	Sen. Simmons (Chair)
12:33:48 PM	S 614
12:33:55 PM	Sen. Simmons
12:34:09 PM	Sen. Mayfield (Chair)
12:34:22 PM	Sen. Simmons
12:35:36 PM	Sen. Mayfield
12:36:29 PM	S 1412
12:36:34 PM	Sen. Simmons
12:37:16 PM	Sen. Mayfield
12:37:22 PM	Sen. Broxson
12:37:26 PM	Sen. Simmons
12:37:52 PM	Am. 836202
12:37:55 PM	Sen. Simmons
12:38:15 PM	Sen. Mayfield
12:38:49 PM	S 1412 (cont.)
12:39:23 PM	Paul Anderson, Chair, Workers Compensation Section of the Florida Bar (waives in support)
12:40:17 PM	Donovan Brown, VP (Suskey Consulting), Associated Industries of Florida (waives in support)
12:40:26 PM	Sen. Mayfield
12:41:24 PM	S 954
12:41:37 PM	Sen. Simmons (Chair)
12:41:40 PM	Sen. Passidomo
12:42:31 PM	Sen. Mayfield
12:42:43 PM	Sen. Passidomo
12:42:48 PM	Sen. Simmons
12:42:54 PM	Sen. Powell
12:43:11 PM	Sen. Passidomo
12:44:00 PM	Sen. Powell
12:44:04 PM	Sen. Passidomo
12:44:17 PM	Sen. Broxson
12:45:16 PM	Sen. Passidomo
12:46:14 PM	Sen. Torres
12:46:37 PM	Sen. Passidomo
12:47:07 PM	Sen. Torres
12:47:29 PM	Sen. Passidomo
12:48:34 PM	Tami Fillyaw, Director, State Group Health Insurance Program, DMS
12:48:52 PM	Sen. Simmons
12:48:56 PM	T. Fillyaw
12:49:31 PM	Sen. Mayfield
12:49:37 PM	T. Fillyaw
12:49:44 PM	Sen. Mayfield
12:49:50 PM	T. Fillyaw
12:50:03 PM	Sen. Mayfield
12:50:21 PM	T. Fillyaw
12:50:52 PM	Sen. Mayfield
12:51:22 PM	T. Fillyaw
12:52:11 PM	Sen. Mayfield
12:52:17 PM	T. Fillyaw
12:52:28 PM	Sen. Mayfield
12:52:36 PM	T. Fillyaw
12:53:02 PM	Sen. Mayfield
12:53:46 PM	T. Fillyaw
12:54:11 PM	Sen. Broxson

12:54:40 PM T. Fillyaw
12:54:52 PM Sen. Mayfield
12:55:36 PM T. Fillyaw
12:56:15 PM Sen. Simmons
12:56:42 PM Meredith Stanfield, Legislative Affairs Director, DMS (waives in support)
12:56:49 PM Sen. Mayfield
12:57:51 PM Sen. Simmons
12:59:01 PM S 448
12:59:04 PM Sen. Brandes
12:59:50 PM James Taylor, Executive Director, The Florida Technology Council (waives in support)
1:00:09 PM Sen. Simmons
1:00:48 PM S 780
1:00:55 PM Sen. Brandes
1:01:26 PM Sen. Simmons
1:02:34 PM S 190
1:02:43 PM Sen. Brandes
1:03:05 PM Sen. Simmons
1:03:37 PM Am. 148958
1:03:46 PM Sen. Brandes
1:04:43 PM Sen. Simmons
1:04:51 PM Sen. Broxson
1:04:57 PM Sen. Brandes
1:05:38 PM Richard Pinsky, 911 Emergency Dispatchers (waives in support)
1:07:29 PM Chris Doolin, Consultant, Small County Coalition
1:08:57 PM Sen. Broxson
1:09:35 PM C. Doolin
1:09:48 PM Sen. Simmons
1:11:07 PM Sen. Broxson
1:11:29 PM Sen. Brandes
1:12:09 PM Sen. Simmons
1:12:20 PM Sen. Mayfield
1:13:05 PM C. Doolin
1:13:53 PM Sen. Simmons
1:14:35 PM Sen. Brandes
1:14:48 PM Sen. Simmons
1:14:57 PM Am. 784556
1:15:04 PM Sen. Brandes
1:15:38 PM Sen. Simmons
1:16:02 PM S 190 (cont.)
1:16:52 PM Richard Pinsky, 911 Emergency Dispatchers (waives in support)
1:16:56 PM Sen. Simmons
1:17:07 PM Sen. Mayfield
1:18:00 PM Sen. Simmons
1:18:03 PM S 438
1:18:07 PM Sen. Lee
1:18:24 PM Sen. Simmons
1:18:50 PM Sen. Lee
1:28:59 PM Sen. Broxson
1:29:18 PM Sen. Lee
1:30:18 PM Sen. Simmons
1:30:36 PM Sen. Broxson
1:32:00 PM Sen. Lee
1:33:24 PM Sen. Broxson
1:34:07 PM Sen. Lee
1:35:37 PM Sen. Gainer
1:36:09 PM Sen. Lee
1:36:57 PM Sen. Gainer
1:37:35 PM Sen. Torres
1:38:00 PM Sen. Lee
1:39:11 PM Sen. Bean
1:39:41 PM Sen. Mayfield
1:40:15 PM Sen. Lee

1:41:21 PM Sen. Mayfield
1:41:50 PM Sen. Lee
1:42:28 PM Sen. Simmons
1:42:57 PM Am. 586436
1:43:04 PM Sen. Lee
1:43:36 PM Sen. Simmons
1:44:07 PM S 438 (cont.)
1:44:33 PM Eric Thorn, Staff Counsel, Florida Life Care Residents Association (waives in support)
1:44:57 PM Tim Meenan, Brookdale Senior Living
1:46:13 PM Sen. Simmons
1:47:05 PM Steve Bahmor, President, Leading Age Florida (waives in support)
1:47:10 PM Sen. Simmons
1:47:14 PM Sen. Broxson
1:48:04 PM Sen. Torres
1:48:56 PM Sen. Lee
1:50:29 PM Sen. Simmons
1:51:12 PM Sen. Bean
1:51:50 PM Sen. Powell
1:52:11 PM Meeting adjourned

The Florida Senate

State Senator René García

36th District

Please reply to:

 District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

February 7, 2018

The Honorable David Simmons
Chair, Appropriations Subcommittee on General Government
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Simmons,

Please excuse my absence from the Appropriations Subcommittee on General Government meeting for Thursday, February 8, 2018. Due to a previous commitment, I will not be able to attend the meeting. Thank you for your understanding.

Sincerely,

State Senator René García
District 36

CC: Giovanni Betta
Lisa Waddell

Committees: Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.