CS/SB 216 by **CA, Bradley**; (Similar to CS/H 0105) Publicly Funded Retirement Programs

632724	A	S	RCS	AP, Hukill	Delete L.33 - 112.	04/10 10:47 AM

CS/SB 242 by **CA, Brandes**; (Similar to CS/CS/H 1309) Publicly Funded Retirement Plans

SB 266 by **Ring**; (Identical to H 0213) Property Appraisers

CS/SB 278 by **FT, Diaz de la Portilla**; (Similar to CS/H 0833) Downtown Development Districts

434210	D	S	RCS	AP, Ring	Delete everything after	04/10 10:23 AM
371462	AA	S	WD	AP, Margolis	Delete L.15:	04/10 10:23 AM
462784	AA	S	WD	AP, Margolis	Delete L.19 - 22:	04/10 10:23 AM
478892	AA	S	UNFAV	AP, Margolis	btw L.23 - 24:	04/10 10:23 AM
541184	A	S	WD	AP, Margolis	Delete L.25:	04/10 10:23 AM
402132	A	S	WD	AP, Margolis	Delete L.30 - 32:	04/10 10:23 AM
181400	A	S	WD	AP, Margolis	btw L.34 - 35:	04/10 10:23 AM

CS/SB 326 by **CF, Clemens (CO-INTRODUCERS) Sachs**; (Similar to CS/CS/H 0021) Substance Abuse Services

111894	PCS	S	RCS	AP, AHS		04/10 12:39 PM
836726	PCS:D	S	RCS	AP, Smith	Delete everything after	04/10 12:39 PM
383958	D	S	WD	AP, Smith	Delete everything after	04/09 01:30 PM

SB 340 by **Grimsley**; (Similar to CS/H 0079) Crisis Stabilization Services

550380	A	S	RCS	AP, Grimsley	Delete L.97 - 99:	04/10 09:49 AM

CS/SB 420 by **CA, Grimsley**; (Similar to CS/CS/H 0627) Animal Control

658666	A	S	RCS	AP, Grimsley	Delete L.80 - 211:	04/10 09:53 AM

CS/SB 534 by **CJ, Latvala (CO-INTRODUCERS) Sobel**; (Compare to CS/CS/H 0369) Human Trafficking

CS/SB 606 by **HP, Gaetz (CO-INTRODUCERS) Montford, Sobel, Hays, Soto, Grimsley**; (Similar to CS/H 0657) Dental Care

161922	PCS	S	RCS	AP, AHS		04/10 12:22 PM
351206	PCS:A	S	RCS	AP, Gaetz	btw L.177 - 178:	04/10 12:22 PM

SB 682 by **Grimsley**; (Similar to CS/H 0111) Transitional Living Facilities

582684	PCS	S	RCS	AP, AHS		04/10 09:55 AM

CS/SB 686 by **FT, Lee**; (Similar to CS/CS/1ST ENG/H 0361) Military Housing Ad Valorem Tax Exemptions

SB 728 by **Benacquisto**; (Similar to CS/H 1021) Health Insurance Coverage for Opioids

CS/SB 766 by **JU, Hukill**; (Compare to CS/CS/CS/H 0649) Surveillance by a Drone

856286	A	S	RCS	AP, Hukill	Delete L.55 - 105:	04/10 01:01 PM

SB 818 by **Garcia**; (Compare to CS/CS/H 0665) Maximum Class Size

164078	PCS	S	RCS	AP, AED		04/10 12:38 PM
348118	PCS:D	S	RCS	AP, Garcia	Delete everything after	04/10 12:38 PM

CS/SB 836 by **BI, Latvala**; (Identical to CS/CS/H 0557) Florida Insurance Guaranty Association

SB 1050 by **Montford**; (Similar to CS/CS/H 7015) Department of Agriculture and Consumer Services

437900	PCS	S	RCS	AP, AGG		04/10 12:47 PM
852090	PCS:A	S	RCS	AP, Montford	btw L.113 - 114:	04/10 12:47 PM
565886	PCS:A	S	RCS	AP, Montford	Delete L.657 - 675:	04/10 12:47 PM

CS/SB 1054 by **GO, Evers**; (Similar to CS/H 0565) Retirement

CS/SB 1114 by **CA, Stargel (CO-INTRODUCERS) Gaetz**; (Similar to CS/CS/CS/H 0549) Membership Associations that Receive Public Funds

SB 1298 by **Simmons**; (Compare to H 0757) Insurance for Short-term Rental and Transportation Network Companies

363694	A	S	RCS	AP, Simmons	Delete L.66 - 84:	04/10 12:51 PM
707796	A	S	RCS	AP, Simmons	Delete L.132 - 241:	04/10 12:51 PM

SB 7018 by **CF**; (Similar to CS/CS/H 0293) State Ombudsman Program

906328	PCS	S	RCS	AP, AHS		04/10 11:48 AM

SB 7028 by **MS**; (Similar to CS/H 0035) Educational Opportunities for Veterans

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Lee, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, April 9, 2015
TIME: 1:00 —4:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 216** Community Affairs / Bradley (Similar CS/H 105, Compare CS/CS/H 1309, CS/S 242)	Publicly Funded Retirement Programs; Requiring that actuarial reports for certain retirement systems or plans include mortality tables; revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; authorizing a municipal services taxing unit that enters into an interlocal agreement for fire protection services with another municipality to impose an excise tax on property insurance premiums, etc. CA 02/03/2015 Fav/CS GO 03/04/2015 Not Considered GO 03/10/2015 Favorable AP 04/09/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
2	**CS/SB 242** Community Affairs / Brandes (Similar CS/CS/H 1309, Compare CS/S 216)	Publicly Funded Retirement Plans; Requiring that actuarial reports for certain retirement plans include mortality tables; revising information to be included in a defined benefit system or plan's annual report to the Department of Management Services; providing a declaration of important state interest, etc. GO 02/17/2015 Favorable CA 03/10/2015 Fav/CS AP 04/09/2015 Favorable	Favorable Yeas 17 Nays 0
3	**SB 266** Ring (Identical H 213)	Property Appraisers; Specifying that a property appraiser's operating budget is final and shall be funded by the county commission once the Department of Revenue makes its final budget amendments; specifying that the county commission remains obligated to fund the department's final property appraiser's operating budget during the pendency of an appeal to the Administration Commission, etc. CA 02/03/2015 Favorable FT 03/16/2015 Favorable AP 04/09/2015 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 278** Finance and Tax / Diaz de la Portilla (Similar CS/H 833)	Downtown Development Districts; Authorizing the governing body of a municipality with a certain population and located within a certain county to levy an ad valorem tax on all real and personal property in a downtown development district to finance the operation of the district; limiting the tax to a specified percentage; providing for limitation of the district's millage, etc. CA 02/03/2015 Favorable FT 02/16/2015 FT 03/02/2015 FT 03/16/2015 FT 03/23/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/SB 326) is available:

5	**CS/SB 326** Children, Families, and Elder Affairs / Clemens (Similar CS/CS/H 21)	Substance Abuse Services; Requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring background screening of owners, directors, and chief financial officers of a recovery residence; requiring the department to publish the list on its website, etc. CF 02/19/2015 Fav/CS AHS 03/11/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - Health and Human Services

6	**SB 340** Grimsley (Similar CS/H 79, Compare H 1277, H 7119)	Crisis Stabilization Services; Requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes, etc. CF 02/19/2015 Favorable AHS 03/04/2015 Favorable AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation - Health and Human Services

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 420** Community Affairs / Grimsley (Similar CS/CS/H 627)	Animal Control; Providing a procedure for adopting or humanely disposing of impounded stray livestock, except cattle, as an alternative to sale or auction; requiring a county animal control center to establish fees and be responsible for damages caused while impounding livestock; authorizing certain municipalities to take custody of an animal found neglected or cruelly treated or to order the owner of such an animal to provide certain care at the owner's expense; clarifying that certain provisions relating to local animal control are not the exclusive means of enforcing animal control laws, etc. AG 02/16/2015 Favorable CA 03/04/2015 Temporarily Postponed CA 03/17/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0
8	**CS/SB 534** Criminal Justice / Latvala (Compare CS/CS/H 369)	Human Trafficking; Requiring the Department of Transportation and certain employers to display human trafficking public awareness signs at specified locations; providing civil penalties for violations, etc. TR 03/12/2015 Favorable CJ 03/23/2015 Fav/CS AP 04/09/2015 Favorable	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/SB 606) is available:

9	**CS/SB 606** Health Policy / Gaetz (Similar CS/H 657)	Dental Care; Establishing a joint local and state dental care access account initiative, subject to the availability of funding; requiring the Department of Health to implement an electronic benefit transfer system; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring the Department of Economic Opportunity to rank shortage areas and medically underserved areas, etc. HP 03/04/2015 Fav/CS AHS 03/16/2015 AHS 03/19/2015 Fav/CS AP 04/09/2015 Fav/CS With subcommittee recommendation - Health and Human Services	Fav/CS Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 682) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 682** Grimsley (Similar CS/H 111)	Transitional Living Facilities; Providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or taking other retaliatory action under certain circumstances; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes, etc. CF 03/05/2015 Favorable AHS 03/16/2015 AHS 03/19/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation - Health and Human Services		
11	**CS/SB 686** Finance and Tax / Lee (Similar CS/CS/H 361)	Military Housing Ad Valorem Tax Exemptions; Providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption, etc. MS 03/04/2015 Favorable FT 03/23/2015 Fav/CS AP 04/09/2015 Favorable	Favorable Yeas 17 Nays 0
12	**SB 728** Benacquisto (Identical H 1021)	Health Insurance Coverage for Opioids; Providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product, etc. BI 03/10/2015 Favorable HP 03/23/2015 Favorable AP 04/09/2015 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/SB 766** Judiciary / Hukill (Compare CS/CS/CS/H 649, H 979, S 1178)	Surveillance by a Drone; Prohibiting a person, a state agency, or a political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state in certain circumstances, etc. CA 03/10/2015 Favorable JU 03/17/2015 JU 03/24/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 818) is available:

14	**SB 818** Garcia (Compare CS/CS/H 665)	Maximum Class Size; Requiring the calculation of a school district's class size categorical allocation reduction at the school average when maximum class size requirements are not met; revising the calculation, etc. ED 03/04/2015 Favorable AED 03/16/2015 Fav/CS AP 04/09/2015 Fav/CS With subcommittee recommendation - Education	Fav/CS Yeas 15 Nays 1
15	**CS/SB 836** Banking and Insurance / Latvala (Identical CS/CS/H 557)	Florida Insurance Guaranty Association; Revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association; requiring charges or recoupments to be displayed separately on premium statements to policyholders and prohibiting their inclusion in rates, etc. BI 03/10/2015 Fav/CS AGG 04/02/2015 Favorable AP 04/09/2015 Favorable With subcommittee recommendation - General Governrment	Favorable Yeas 16 Nays 0

A proposed committee substitute for the following bill (SB 1050) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**SB 1050** Montford (Similar CS/CS/H 7015)	Department of Agriculture and Consumer Services; Removing provisions requiring the department to give certain priority consideration when evaluating applications for funding of agriculture education and promotion facilities; authorizing the department to secure letters of patent, copyrights, and trademarks on work products and to engage in acts accordingly; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; repealing provisions relating to the authority of the Florida Forest Service to dedicate and reserve state park lands for public use, etc. AG 03/10/2015 Favorable AGG 03/17/2015 Fav/CS AP 04/09/2015 Fav/CS With subcommittee recommendation - General Government	Fav/CS Yeas 16 Nays 0
17	**CS/SB 1054** Governmental Oversight and Accountability / Evers (Similar CS/H 565)	Retirement; Authorizing local agency employers to reassess designation of positions for inclusion in the Senior Management Service Class; providing for removal of certain positions, etc. GO 03/10/2015 Fav/CS CA 03/23/2015 Favorable AP 04/09/2015 Favorable	Favorable Yeas 17 Nays 0
18	**CS/SB 1114** Community Affairs / Stargel (Similar CS/CS/CS/H 549)	Membership Associations that Receive Public Funds; Requiring a membership association that receives a specified percentage of its budget from public funds to file an annual report with the Legislature; prohibiting a membership association from expending public funds on litigation against the state, etc. CA 03/17/2015 Fav/CS AP 04/09/2015 Favorable	Favorable Yeas 12 Nays 6
19	**SB 1298** Simmons (Compare H 757)	Insurance for Short-term Rental and Transportation Network Companies; Establishing insurance requirements for short-term rental and transportation network companies and participating drivers during certain timeframes; prohibiting the personal insurance policy of a participating lessor of a short-term rental property from providing specified coverage during certain timeframes except under specified circumstances; prohibiting the personal motor vehicle insurance policy of a participating driver from providing specified coverage during certain timeframes except under specified circumstances, etc. BI 03/23/2015 Favorable JU 03/31/2015 Favorable AP 04/09/2015 Fav/CS	Fav/CS Yeas 14 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 7018) is available:		
20	**SB 7018** Children, Families, and Elder Affairs (Similar CS/CS/H 293, S 654, Compare CS/CS/H 1001, CS/S 382)	State Ombudsman Program; Revising legislative intent with respect to citizen ombudsmen; deleting references to ombudsman councils and transferring their responsibilities to representatives of the Office of State Long-Term Care Ombudsman; revising the duties and authority of the state ombudsman; requiring the state ombudsman to designate and direct program districts; providing conditions under which a representative of the office could be found to have a conflict of interest, etc. AHS 03/11/2015 Fav/CS AP 04/09/2015 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation - Health and Human Services		
21	**SB 7028** Military and Veterans Affairs, Space, and Domestic Security (Similar CS/H 35)	Educational Opportunities for Veterans; Revising criteria for eligibility for out-of-state fee waivers at state universities, Florida College System institutions, and specified career centers; removing a provision regarding the applicability of waivers to required credit hours for a student's degree or certificate program, etc. AED 03/04/2015 Favorable AP 04/09/2015 Favorable	Favorable Yeas 17 Nays 0
	With subcommittee recommendation - Education		
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 216
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Bradley
SUBJECT:	Publicly Funded Retirement Programs
DATE:	April 13, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	**Fav/CS**
2.	McVaney	McVaney	GO	**Favorable**
3.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 216 allows a municipality providing fire protection services to a Municipal Services Taxing Unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The Revenue Estimating Conference has determined that this bill will reduce the General Revenue Fund by $200,000 annually and increase local governments' revenues by $200,000 annually beginning in Fiscal Year 2015-2016.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

The "Marvin B. Clayton Firefighters and Police Officers' Pension Trust Fund" Acts

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts[1] declare a legitimate state purpose of providing a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal

[1] *See* ch. 175 and 185, F.S.

police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.[2]

In 1939, the Legislature enacted ch. 175, F.S., thereby encouraging cities to establish firefighter retirement plans by providing cities with the incentive of access to premium tax revenues. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. Single consolidated governments of a county and one or more municipalities are also allowed to participate in the trust fund. Currently, unincorporated areas of a county may not participate unless a special fire control district includes the unincorporated areas.

Administration of Retirement Plans

The Division of Retirement (division) in the Department of Management Services administers benefits to firefighters under two types of plans, a chapter plan or a local plan. A chapter plan is a plan that adopts the provisions of either ch. 175 or 185, F.S., by reference. A local plan is a plan that is created by a special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. The division is responsible for overseeing and monitoring these plans with the day-to-day operational control residing with local boards of trustees subject to the regulatory authority of the division.[3] If the division were to deem that a firefighter or police pension plan created pursuant to ch. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Funding Sources

Four sources provide funding for these pension plans: 1) net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the "premium tax"); 2) employee contributions; 3) other revenue sources; and 4) mandatory payments by the city of the normal cost of the plan.[4] To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

An excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district funds the Firefighters' Pension Trust Fund of each municipality or special fire control district.[5] The insurers pay the tax to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the division.[6] For Fiscal Year 2014-2015, premium tax collections are estimated to be $804 million, and distributions to the Firefighters' Pension Trust Fund are predicted to be $179.5 million.[7]

[2] *See* ss. 175.021(1) and 185.01(1), F.S.
[3] The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.
[4] Sections 175.091(1)(a) and 185.07(1), F.S.
[5] Section 175.101(1), F.S.
[6] *See* s. 175.121, F.S.
[7] Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014), at 110.

A municipality that has entered into a one year or longer interlocal agreement to provide fire services to another incorporated municipality may receive its premium taxes.[8] The municipality providing fire services must notify the division of the interlocal agreement. The division may then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.[9]

Counties Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of MSTUs.[10] The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to ten mills.[11]

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.[12]

III. Effect of Proposed Changes:

The bill amends ss. 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411, F.S., respectively, to allow a municipality providing fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[8] Although, the criteria in s. 175.041(3)(c), F.S., must be met.
[9] *See* Chapter 2005-205, Laws of Fla. (HB 1159).
[10] Section 125.01(1)(q), F.S.
[11] Section 200.071(3), F.S.
[12] Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Revenue Estimating Conference has determined that the provisions of CS/CS/SB 216 related to the insurance premium tax will negatively impact the General Revenue Fund by $200,000 annually and increase local governments' revenues by $200,000 annually beginning in Fiscal Year 2015-2016.[13]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411.

IX. Additional Information:

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

CS/CS by Appropriations on April 9, 2015:
Removes provisions relating to mortality tables. Specifically, the CS removes the requirement that local government pension plan actuarial valuations, and the additional actuarial disclosures required to be submitted to the Department of Management Services, use a mortality table methodology for funding purposes consistent with the most recent published actuarial valuation report of the Florida Retirement System.

[13] Revenue Estimating Conference, *Publicly Funded Retirement Systems, CS/SB 105 and CS/SB 216*, (March 27, 2015) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page377-379.pdf (last visited April 9, 2015).

CS by Community Affairs on February 3, 2015:
Requires local government pension plan actuarial valuations, and the additional actuarial disclosures required under s. 112.664, F.S., to use a mortality table methodology for funding purposes that is consistent with the most recent actuarial report issued by the FRS.

B. Amendments:

None.

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

632724

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete lines 33 - 112.

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

And the title is amended as follows:

Delete lines 3 - 8

and insert:

programs; amending s.

By the Committee on Community Affairs; and Senator Bradley

578-01469-15 2015216c1

A bill to be entitled

An act relating to publicly funded retirement programs; amending s. 112.63, F.S.; requiring that actuarial reports for certain retirement systems or plans include mortality tables; amending s. 112.664, F.S.; revising information to be included in the annual report of a defined benefit system or plan to the Department of Management Services; amending s. 175.041, F.S.; revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; providing that any municipality that provides fire protection services to a municipal service taxing unit under an interlocal agreement is eligible to receive property insurance premium taxes; amending s. 175.101, F.S.; authorizing a municipal service taxing unit that enters into an interlocal agreement for fire protection services with another municipality to impose an excise tax on property insurance premiums; amending s. 175.111, F.S.; requiring municipal service taxing units to provide the Division of Retirement of the Department of Management Services with a certified copy of the ordinance assessing and imposing certain taxes; amending ss. 175.122 and 175.351, F.S.; revising provisions relating to the limitation of disbursement to conform to changes made by the act; amending s. 175.411, F.S.; authorizing a municipal service taxing unit, under certain conditions, to revoke its participation and cease to receive property insurance premium taxes; providing an effective date.

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

578-01469-15 2015216c1

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

Section 1. Subsection (1) of section 112.63, Florida Statutes, is amended to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but need ~~shall~~ not be limited to~~, the following~~:

(a) Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.

(b) A plan to amortize any unfunded liability pursuant to s. 112.64 and a description of actions taken to reduce the unfunded liability.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of unfunded liabilities, if any.

(e) A comparative review illustrating the actual salary increases granted and the rate of investment return realized

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

over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.

(f) Mortality tables that use mortality methodology consistent with the most recently published actuarial valuation report of the Florida Retirement System.

(g) ~~(f)~~ A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

Section 2. Subsection (1) of section 112.664, Florida Statutes, is amended to read:

112.664 Reporting standards for defined benefit retirement plans or systems.—

(1) In addition to the other reporting requirements of this part, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends on or after June 30, 2014, and thereafter in each year required under s. 112.63(2), each defined benefit retirement system or plan, excluding the Florida Retirement System, shall prepare and electronically report the following information to the Department of Management Services in a format prescribed by the department:

(a) Annual financial statements that comply ~~are in compliance~~ with the requirements of the Governmental Accounting Standards ~~Government Accounting and Standard~~ Board's Statement No. 67, titled "Financial Reporting for Pension Plans," and Statement No. 68, titled "Accounting and Financial Reporting for Pensions," using mortality tables that use mortality methodology consistent with the most recently published actuarial valuation report of the Florida Retirement System ~~RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA~~.

(b) Annual financial statements similar to those required under paragraph (a), but which use an assumed rate of return on investments and an assumed discount rate that are equal to 200 basis points less than the plan's assumed rate of return.

(c) Information indicating the number of months or years for which the current market value of assets are adequate to sustain the payment of expected retirement benefits as determined in the plan's latest valuation and under the financial statements prepared pursuant to paragraphs (a) and (b).

(d) Information indicating the recommended contributions to the plan based on the plan's latest valuation, and the contributions necessary to fund the plan based on financial statements prepared pursuant to paragraphs (a) and (b), stated as an annual dollar value and a percentage of valuation payroll.

Section 3. Subsection (3) of section 175.041, Florida Statutes, is amended to read:

175.041 Firefighters' Pension Trust Fund created; applicability of provisions.—For any municipality, special fire

control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(3) ~~The provisions of~~ This chapter applies ~~shall apply~~ only to municipalities organized and established pursuant to the laws of the state and to special fire control districts. This chapter does~~, and said provisions shall~~ not apply to the unincorporated areas of any county or counties except with respect to municipal service taxing units established in unincorporated areas for the purpose of receiving fire protection service from a municipality and special fire control districts that include unincorporated areas. This chapter also does not~~, nor shall the provisions hereof~~ apply to any governmental entity whose firefighters are eligible to participate in the Florida Retirement System.

(a) Special fire control districts that include, or consist exclusively of, unincorporated areas of one or more counties may levy and impose the tax and participate in the retirement programs enabled by this chapter.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide fire services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for

the municipality to the consolidated government as long as the interlocal agreement is in effect.

(c) Any municipality that has entered into an interlocal agreement to provide fire protection services to any other incorporated municipality or a municipal service taxing unit in an unincorporated area, in its entirety, for a period of 12 months or more may be eligible to receive the premium taxes reported for such other municipality or municipal service taxing unit. In order to be eligible for such premium taxes, the municipality providing the fire services must notify the division that it has entered into an interlocal agreement with another municipality or a county on behalf of a municipal service taxing unit. The municipality receiving the fire services, or a county on behalf of the municipal service taxing unit receiving the fire services, may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the ~~municipal~~ ordinance levying the tax, the division may distribute any premium taxes reported for the municipality or municipal service taxing unit receiving the fire services to the participating municipality providing the fire services as long as the interlocal agreement is in effect.

Section 4. Subsections (1) and (3) of section 175.101, Florida Statutes, are amended to read:

175.101 State excise tax on property insurance premiums authorized; procedure.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) Each municipality, municipal service taxing unit, or

special fire control district in this state described and classified in s. 175.041, having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, by whatever name known, providing pension benefits to firefighters as provided under this chapter, or receiving fire protection services from a municipality participating under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities, municipal service taxing units, or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of municipal service taxing units or special fire control districts, respectively. Whenever the boundaries of a special fire control district that has lawfully established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has also lawfully established a firefighters' pension trust fund, or a municipal service taxing unit receiving fire protection services from a municipality participating under this chapter, that portion of the tax receipts attributable to insurance policies covering property situated both within the municipality or municipal service taxing unit, and the special fire control

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

district shall be given to the fire service provider. For the purpose of this section, the boundaries of a special fire control district include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or other agreed-upon extension, or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3). The agent shall identify the fire service provider on the property owner's application for insurance. Remaining revenues collected pursuant to this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

(3) This excise tax shall be payable annually on March 1 of each year after the passage of an ordinance, in the case of a municipality or municipal service taxing unit, or resolution, in the case of a special fire control district, assessing and imposing the tax authorized by this section. Installments of taxes shall be paid according to the provision of s. 624.5092(2)(a), (b), and (c).

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated pursuant to the authority in s. 3 or s. 6(e), Art. VIII of the State Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire

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

protection services by the consolidated government. This section also applies to any municipality, as provided in s. 175.041(3)(c), which has entered into an interlocal agreement to receive fire protection services from another municipality participating under this chapter. The excise tax may be levied on all premiums collected on property insurance policies covering property located within the corporate limits of the municipality receiving the fire protection services, but will be available for distribution to the municipality providing the fire protection services.

Section 5. Section 175.111, Florida Statutes, is amended to read:

175.111 Certified copy of ordinance or resolution filed; insurance companies' annual report of premiums; duplicate files; book of accounts.—For any municipality, municipal service taxing unit, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, whenever any municipality, or any county on behalf of a municipal service taxing unit, passes an ordinance or whenever any special fire control district passes a resolution establishing a chapter plan or local law plan assessing and imposing the taxes authorized in s. 175.101, a certified copy of such ordinance or resolution shall be deposited with the division. Thereafter every insurance company, association, corporation, or other insurer carrying on the business of property insurance on real or personal property, on or before the succeeding March 1 after date of the passage of the ordinance or resolution, shall report fully in writing and under oath to the division and the Department of Revenue a just

and true account of all premiums by such insurer received for property insurance policies covering or insuring any real or personal property located within the corporate limits of each such municipality, municipal service taxing unit, or special fire control district during the period of time elapsing between the date of the passage of the ordinance or resolution and the end of the calendar year. The report shall include the code designation as prescribed by the division for each piece of insured property, real or personal, located within the corporate limits of each municipality and within the legally defined boundaries of each special fire control district and municipal service taxing unit. The aforesaid insurer shall annually thereafter, on March 1, file with the Department of Revenue a similar report covering the preceding year's premium receipts, and every such insurer at the same time of making such reports shall pay to the Department of Revenue the amount of the tax hereinbefore mentioned. Every insurer engaged in carrying on such insurance business in the state shall keep accurate books of accounts of all such business done by it within the corporate limits of each such municipality and within the legally defined boundaries of each such special fire control district and municipal service taxing unit, and in such manner as to be able to comply with the provisions of this chapter. Based on the insurers' reports of premium receipts, the division shall prepare a consolidated premium report and shall furnish to any municipality, municipal service taxing unit, or special fire control district requesting the same a copy of the relevant section of that report.

Section 6. Section 175.122, Florida Statutes, is amended to

read:

175.122 Limitation of disbursement.—For any municipality, municipal service taxing unit, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, any municipality, municipal service taxing unit, or special fire control district participating in the firefighters' pension trust fund pursuant to the provisions of this chapter, whether under a chapter plan or local law plan, shall be limited to receiving any moneys from such fund in excess of that produced by one-half of the excise tax, as provided for in s. 175.101; however, any such municipality, municipal service taxing unit, or special fire control district receiving less than 6 percent of its fire department payroll from such fund shall be entitled to receive from such fund the amount determined under s. 175.121, in excess of one-half of the excise tax, not to exceed 6 percent of its fire department payroll. Payroll amounts of members included in the Florida Retirement System shall not be included.

Section 7. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities, municipal service taxing units, and special fire control districts having their own pension plans for firefighters.—For any municipality, municipal service taxing unit, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities, municipal service taxing units, and special fire control districts with their own pension plans for firefighters, or for firefighters and police

officers if included, to participate in the distribution of the tax fund established pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) If a municipality has a pension plan for firefighters, or a pension plan for firefighters and police officers if included, which in the opinion of the division meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of firefighters of the municipality, may:

(a) Place the income from the premium tax in s. 175.101 in such pension plan for the sole and exclusive use of its firefighters, or for firefighters and police officers if included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the firefighters included in that pension plan; or

(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers if included, participating in such separate supplemental plan.

(2) The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to firefighters, or to firefighters and police officers if included. However, local law plans in effect on October 1, 1998, must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a). If a plan is in compliance with such minimum benefit provisions, as subsequent additional

premium tax revenues become available, they must be used to provide extra benefits. Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter. For the purpose of this chapter, the term:

(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed that amount received for calendar year 1997.

(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999.

(3) A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted without the approval of the municipality, special fire control district, or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before the last public hearing thereon. Such statement must also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before May 27, 1939, are deemed to meet the minimum benefits and minimum standards only in this chapter.

(4) Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) A local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on March 12, 1999.

(b) Section 175.061(1)(b) does not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

(c) The election set forth in paragraph (1)(b) is deemed to have been made.

(5) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing, and copies made available to the participants and to the general public.

Section 8. Section 175.411, Florida Statutes, is amended to read:

175.411 Optional participation.—A municipality, municipal service taxing unit, or special fire control district may revoke its participation under this chapter by rescinding the legislative act, ordinance, or resolution which assesses and imposes the taxes authorized in s. 175.101, and by furnishing a certified copy of such legislative act, ordinance, or resolution to the division. Thereafter, the municipality, municipal service taxing unit, or special fire control district shall be prohibited from participating under this chapter, and shall not be eligible for future premium tax moneys. Premium tax moneys

previously received shall continue to be used for the sole and exclusive benefit of firefighters, or firefighters and police officers where included, and no amendment, legislative act, ordinance, or resolution shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the firefighters, retirees, or their beneficiaries. The municipality, municipal service taxing unit, or special fire control district shall continue to furnish an annual report to the division as provided in s. 175.261. If the municipality, municipal service taxing unit, or special fire control district subsequently terminates the defined benefit plan, they shall do so in compliance with the provisions of s. 175.361.

Section 9. This act shall take effect July 1, 2015.

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The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 12, 2015

I respectfully request that **Senate Bill # 216**, relating to Publicly Funded Retirement Programs, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2015
Meeting Date

Topic _____ Bill Number 216 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

216
Bill Number (if applicable)

Bill
Amendment Barcode (if applicable)

Topic Retirement

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison
Street

Tallahassee FL 34205
City *State* *Zip*

Phone

Email

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

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

Representing Florida Professional Firefighters

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

APPEARANCE RECORD

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

4/8/15
Meeting Date

216
Bill Number (if applicable)

Topic Publicly funded Retirement Programs

Amendment Barcode (if applicable)

Name Yelire Goin

Job Title Attorney

Address 204 S. Monroe St Ste 203
Street

Tall FL 32301
City *State* *Zip*

Phone 850 284-2460

Email Ygoin@bplegal.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of Cape Coral

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

4/9/15
Meeting Date

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

SB216
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Bronough
Street

Tall FL 32301
City *State* *Zip*

Phone 222 9684

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

216
Bill Number (if applicable)

632724
Amendment Barcode (if applicable)

Topic Retirement

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison
Street

Tallahassee FL
City *State* *Zip*

Phone 941-724-5914

Email roccofish@verizon.net

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

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

Representing Florida Professional Firefighters

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 242
INTRODUCER:	Community Affairs Committee and Senator Brandes
SUBJECT:	Publicly Funded Retirement Plans
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	**Favorable**
2.	White	Yeatman	CA	**Fav/CS**
3.	Shettle	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 242 requires local government pension plans, in conducting the actuarial valuations of their pension plans, to use mortality table methodologies consistent with the methodologies used in either of the two most recently published actuarial valuation report of the Florida Retirement System (FRS). In most instances, the mortality tables used will recognize longer lifetimes for annuitants and result in higher annual contributions required to be paid into the pension funds in the near term.

Similarly, the bill revises the mortality tables to be used in the actuarial disclosures in financial statements submitted to the Department of Management Services (DMS). This modification does not impact the actuarial funding of the various pension plans but does provide some information that may be useful when comparing local pension plans and the FRS.

To the extent the use of the updated mortality tables results in increases to the normal costs or unfunded liabilities of local government pension plans, this bill will result in higher contributions being paid into the local government pension plans in the near term.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Florida Local Retirement Systems and Plans

The Division of Retirement of the DMS reports[1] that as of September 30, 2014, there are 491 defined benefit plans sponsored by 249 local governments in Florida. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 87,097 retirees, with 97,677 active employees, and total plan assets of $30.5 billion.[2] The average annual pension in these local defined benefit plans is $25,252, and the average annual required contribution rate as a percentage of payroll is 31.96 percent. The total unfunded actuarial accrued liability for all the defined benefit plans as of September 30, 2014, was $10.5 billion.

Actuarial Soundness of Retirement Plans

The Florida Constitution requires public pension plans in the State of Florida to be concurrently funded on a sound actuarial basis.[3] The Florida Protection of Public Employee Retirement Benefits Act (Act)[4] establishes the minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The Act states the legislative intent to "prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."[5]

Under current law, total contributions to a public sector retirement plan must be sufficient to fund the normal cost of the retirement plan and to amortize the unfunded actuarial liability over a period not to exceed 40 years.[6] If an unfunded liability arises from a plan amendment, changes in actuarial assumptions, changes in funding methods or actuarial gains or losses, the liability must be amortized within 30 years.[7] The laws establishing the municipal police[8] and firefighter[9] pension plans have similar provisions.

Enrolled actuaries prepare and certify actuarial reports for each retirement plan subject to the Act, at regular intervals of at least three years.[10] The actuarial reports must include at least the following information:[11]

- Adequacy of employer and employee contributions;

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[1] Division of Management Services, *Florida Local Government Retirement Systems*, 2014 Annual Report, available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited on February 12, 2015).
[2] The other 6 plans are school board early retirement programs that provide benefits to 1,686 retirees, with active plan membership of 4,506, and total plan assets of $64.8 million.
[3] FLA. CONST. art. X, s. 14 (1976).
[4] Part VII of Ch. 112, F.S., implements Article X, Section 14, of the Florida Constitution.
[5] Section 112.61, F.S.
[6] Section 112.64(2), F.S.
[7] Section 112.64(4), F.S.
[8] Section 185.07, F.S.
[9] Section 175.091, F.S.
[10] Section 112.63, F.S.
[11] Section 112.63(a)-(f), F.S.

- A plan to amortize any unfunded liability and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the FRS's assumed rate of return; and
- A statement by the enrolled actuary that the report is complete and accurate and that the techniques and assumptions used are reasonable and meet the requirements of state law.

The actuarial reports are submitted to the DMS, which reviews each report to determine whether the actuarial valuation is complete, accurate, and based on reasonable assumptions.[12]

Mortality Tables, Generally

Because mortality assumptions control the expected length of time for annuity payments, they are a critical component in determining the liabilities of a defined benefit plan.[13] Defined benefit accounting standards do not dictate mortality assumptions, leaving sponsors to decide which assumptions they use for financial statement reporting. However, the Pension Protection Act of 2006 (PPA) gives the IRS authority to prescribe mortality rates used in the calculation of funding liabilities. In this way, the RP-2000 Mortality Tables have been implemented pursuant to section 430(h)(3) of the Internal Revenue Code (IRC).

The RP-2000 was published by the Society of Actuaries (SOA) in the year 2000.[14] In 2009, the SOA started the process of creating updated mortality tables for pension plans. Some sponsors have already started using the interim Scale BB improvement actors, which were released in 2012. In February 2014, the SOA released the RP-2014 tables and MP-2014 improvement scales. Although the IRS has not publicly indicated when it will review funding of mortality assumptions, as required every 10 years by PPA, analysts within the industry suggest the new RP-2014 tables may be "in use as early as 2016 for both funding requirements and lump-sum conversions."[15] For accounting purposes, adoption of the new mortality tables will be at the discretion of the plan sponsor.

[12] Section 112.63(4)(a), F.S.
[13] Russell Research, *How Will the New RP-2014 Mortality Tables Affect my DB Plan Strategy*, available at http://www.russell.com/documents/institutional-investors/research/how-will-the-new-rp-2014-mortality-tables-affect-my-db-strategy.pdf (last visited March 23, 2015).
[14] RP-2000 Mortality Tables are available at https://www.soa.org/research/experience-study/pension/research-rp-2000-mortality-tables.aspx (last visited on February 23, 2015).
[15] Russell Research, *How Will the New RP-2014 Mortality Tables Affect my DB Plan Strategy*, available at http://www.russell.com/documents/institutional-investors/research/how-will-the-new-rp-2014-mortality-tables-affect-my-db-strategy.pdf (last visited March 23, 2015).

Mortality Tables used by FRS

The FRS uses different mortality tables for its general employee and special risk classes for non-disability retirement. The 2014 FRS Valuation used the RP-2000 mortality table with Scale BB improvement actors. Non-disability retirements have a separate mortality basis for Special Risk Class members compared to all other membership classes. Disability retirements have a common mortality basis for all classes. The disability requirement for FRS members is total and permanent from all forms of employment as certified by two licensed physicians.

Mortality Tables used by Local Government Retirement Plans

In determining the actuarially required contributions for a local government pension plan, the pension plan's board of trustees, with guidance from its professional advisors, chooses a mortality table to be applied in the valuation report.[16] The table below shows the various mortality tables used by local government retirement plans and the frequency of use among the plans.

Mortality Table	**Number of local government plans using this table**
1983 Group Annuity Mortality (GAM 83)	20
1994 Group Annuity Mortality (GAM 94)	10
1994 Group Annuity Mortality with Scale AA (GAR 94)	7
Uninsured Population 1994 (UP 94)	4
Retirement Plans 2000 (RP 2000)	437
Internal Revenue Service Prescribed	8
Other	3
Total	489

Mortality Tables, as Additional Disclosures

In addition to the valuation report, s. 112.664, F.S., requires certain actuarial disclosures used to determine required funding for all publicly-funded defined benefit retirement plans, other than FRS. Amongst other provisions, these additional actuarial disclosures mandate the use of the "RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA."[17]

The additional reporting requirements must be provided to the DMS annually, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends after June 30, 2014, and thereafter in each year in which an actuarial valuation of the plan is done. Plans that fail to submit timely the required information within 60 days after receipt of the plan's actuarial report will be deemed to be in noncompliance. The DMS may notify the Department of Revenue (DOR) and Department of Financial Services (DFS) of the noncompliance, and the DOR and DFS must withhold funds payable to the plan sponsor, which are not pledged towards bond debt service.

[16] Dep't of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 2 (Jan. 20, 2015).
[17] Section 112.664(1)(a), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to require the actuarial valuations of local government pension plans to use mortality table methodology consistent with either of the two most recently published actuarial valuation reports of the FRS. For the 2014 Actuarial Valuation of the FRS, the RP-2000 mortality table with Scale BB was used.

While the FRS uses RP-2000 mortality table with Scale BB, additional adjustments are made based on gender, membership class, and varying mixes of white collar and blue collar work. For example, different mortality bases are used for non-disability retirements in the Special Risk Class compared to the mortality bases used for non-disability retirements in other membership classes. At first glance, one would assume that the mortality assumptions used for FRS Special Risk Class would be an acceptable assumption to use for the police and firefighter pension plans. However, the FRS Special Risk Class has a broader membership than those local pension plans.[18] This broader membership base may result in a different mix of white collar and blue collar jobs. The bill specifies that the mortality tables must include the projection scale for mortality improvement; appropriate risk and collar adjustments must be made based on plan demographics; and the tables must be used for assumptions for preretirement and postretirement mortality.

Section 2 amends s. 112.664, F.S., to revise the information included in a defined benefit retirement system or plan's annual report to the DMS to include financial statements that use mortality table methodology consistent with either of the two most recently published actuarial valuation report of the FRS. In general, this change will require local plans to use Scale BB rather than Scale AA with the RP-2000 mortality table.

Section 3 provides that the Legislature determines that the bill fulfills an important state interest as related to publicly funded retirement plans.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of Art. VII, s. 18(a) of the Florida Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or

[18] Section 121.0515, F.S., defines membership in the FRS Special Risk Class also to include correctional officers, certain emergency medical technicians and paramedics, certain nurses and other health professionals, certain forensic laboratory technicians, and certain employees of a medical examiner's office.

- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector pension plans to use similar mortality methodologies, it appears the bill applies to all persons similarly situated (state, municipalities and special districts sponsoring pension plans). The bill also contains a finding that the bill fulfills an important state interest (section 3). Thus, it appears the bill is binding upon cities and counties that sponsor retirement plans.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under CS/SB 242, local governments' pension plan board of trustees, and professional advisors, will be required to use the FRS mortality tables in their actuarial valuations, which may result in different contribution requirements from prior plans' valuation reports.[19]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.63 and 112.664.

[19] Dep't of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 5 (Jan. 20, 2015).

Additional Information:

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

CS by Community Affairs on March 10, 2015:
Actuarial reports and annual financial statements must include mortality tables from either of the two most recent FRS reports, instead of just the most recently published one. The mortality tables must specifically include the projection scale for mortality improvement; appropriate risk and collar adjustments must be made based on plan demographics; and the tables must be used for assumptions for preretirement and postretirement mortality.

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 Brandes

578-02123-15 2015242c1

A bill to be entitled

An act relating to publicly funded retirement plans; amending s. 112.63, F.S.; requiring that actuarial reports for certain retirement plans include mortality tables; specifying requirements; amending s. 112.664, F.S.; revising information to be included in a defined benefit system or plan's annual report to the Department of Management Services; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (1) of section 112.63, Florida Statutes, is amended to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but is ~~shall~~ not ~~be~~ limited to, the following:

(a) Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of

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578-02123-15 2015242c1

the system and the extent of unfunded accrued liabilities, if any.

(b) A plan to amortize any unfunded liability pursuant to s. 112.64 and a description of actions taken to reduce the unfunded liability.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of unfunded liabilities, if any.

(e) A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.

(f) The mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement. Appropriate risk and collar adjustments must be made based on plan demographics. The tables must be used for assumptions for preretirement and postretirement mortality.

(g) ~~(f)~~ A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

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

Section 2. Subsection (1) of section 112.664, Florida Statutes, is amended to read:

112.664 Reporting standards for defined benefit retirement plans or systems.—

(1) In addition to the other reporting requirements of this part, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends on or after June 30, 2014, and thereafter in each year required under s. 112.63(2), each defined benefit retirement system or plan, excluding the Florida Retirement System, shall prepare and electronically report the following information to the Department of Management Services in a format prescribed by the department:

(a) Annual financial statements that comply ~~are in compliance~~ with the requirements of the Governmental Accounting Standards ~~Government Accounting and Standard~~ Board's Statement No. 67, titled "Financial Reporting for Pension Plans," and Statement No. 68, titled "Accounting and Financial Reporting for Pensions," using mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement. Appropriate risk and collar adjustments must be made based on plan demographics. The tables must be used for assumptions for preretirement and postretirement mortality ~~RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA~~.

(b) Annual financial statements similar to those required under paragraph (a), but which use an assumed rate of return on investments and an assumed discount rate that are equal to 200

basis points less than the plan's assumed rate of return.

(c) Information indicating the number of months or years for which the current market value of assets are adequate to sustain the payment of expected retirement benefits as determined in the plan's latest valuation and under the financial statements prepared pursuant to paragraphs (a) and (b).

(d) Information indicating the recommended contributions to the plan based on the plan's latest valuation, and the contributions necessary to fund the plan based on financial statements prepared pursuant to paragraphs (a) and (b), stated as an annual dollar value and a percentage of valuation payroll.

Section 3. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 4. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 10, 2015

I respectfully request that **Senate Bill #242**, relating to **Publicly Funded Retirement Plans**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

SB 242
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Bronough
Street

Tall FL 32301
City *State* *Zip*

Phone 222 9684

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 266
INTRODUCER:	Senator Ring
SUBJECT:	Property Appraisers
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Babin	Diez-Arguelles	FT	**Favorable**
3.	Babin	Kynoch	AP	**Favorable**

I. Summary:

SB 266 provides that a board of county commissioners must fund the property appraiser's budget according to the amount determined by the Department of Revenue in its final budget determination, and must fund the department-approved budget during the pendency of an appeal to the Administration Commission.

The bill does not have a fiscal impact.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Process for Determining the Property Appraiser's Budget

Property appraisers are required to submit a proposed budget for the operation of the property appraiser's office to the Department of Revenue (DOR) by June 1 of each year.[1] The property appraiser is required to submit the proposed budget to the board of county commissioners (board) at the same time. The DOR reviews the budget request and may amend the budgeted amount "as it deems necessary, in order that the budget be neither inadequate nor excessive."[2]

By July 15, the DOR must notify both the property appraiser and the board of its tentative budget determination.[3] The property appraiser and board have until August 15 to submit additional information to the DOR if they choose to do so. The DOR issues its final budget determination by August 15.

[1] Section 195.087(1)(a), F.S.
[2] *Id.*
[3] *Id.*

The property appraiser or the board may appeal the DOR's approved final budget to the Governor and Cabinet sitting as the Administration Commission.[4] The appeal must be filed no later than 15 days after the conclusion of the public hearing held pursuant to s. 200.065(2)(d), F.S., (final adoption of the county millage rate and budget). The Administration Commission has discretion as to whether to accept the appeal or not. Upon completion of this process, the resulting budget request as approved by the department and as amended by the commission becomes the operating budget of the property appraiser for the ensuing fiscal year beginning October 1.[5]

Board of County Commissioners of Broward County vs. Lori Parrish, Broward County Property Appraiser

The Board of County Commissioners of Broward County (Board) disagreed with the Property Appraiser as to the appropriate level of funding that it should be required to provide for the operation of the Property Appraiser's office for fiscal year 2014. While the Board proposed a budget of $14,886,000, a 3.8 percent increase over the prior year, the Property Appraiser submitted a request for $18,819,000.[6] The DOR approved the Property Appraiser's final budget at $18,712,207.[7]

The Board appealed the DOR's final budget determination to the Administration Commission and, in the interim, funded the Property Appraiser's office at $15,855,000. The Property Appraiser petitioned the circuit court for a Writ of Mandamus requiring the Board to fund the Property Appraiser's office at the amount set by the DOR. The Writ of Mandamus was granted on December 31, 2013.[8] The Board appealed.[9]

On appeal, the Fourth District Court of Appeal determined that the statute required the Board to fund the Property Appraiser's budget at the amount approved by the DOR.[10] At the time of this analysis, the district court of appeal's decision is not final, as a timely motion for rehearing was filed and awaits disposition.

III. Effect of Proposed Changes:

Section 1 amends s. 195.087, F.S., to explicitly state that a property appraiser's budget is final and must be funded by the board once the DOR has made its final budget determination. The obligation to fund the property appraiser's office at the level set by the DOR is not affected by the filing of an appeal to the Administration Commission.

This statutory change would codify the result reached by the Fourth District Court of Appeal.[11]

Section 2 establishes an effective date of July 1, 2015.

[4] Section 195.087(1)(b), F.S.
[5] *See* s. 195.087(1)(b), F.S.
[6] *Id.*
[7] *Id.*
[8] *Lori Parrish v. Board of County Commissioners*, No. 13-23090 (Fla. 17th Cir. 2013).
[9] *Board of County Commissioners of Broward County, Florida v. Parrish*, No. 4D14-101 (Fla. 4th DCA 2014).
[10] *Id.*
[11] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates 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 a 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 195.087 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.

By Senator Ring

29-00209A-15 2015266__

A bill to be entitled

An act relating to property appraisers; amending s. 195.087, F.S.; specifying that a property appraiser's operating budget is final and shall be funded by the county commission once the Department of Revenue makes its final budget amendments; specifying that the county commission remains obligated to fund the department's final property appraiser's operating budget during the pendency of an appeal to the Administration Commission; providing an effective date.

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

Section 1. Subsection (1) of section 195.087, Florida Statutes, is amended to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(1)(a) On or before June 1 of each year, every property appraiser, regardless of the form of county government, shall submit to the Department of Revenue a budget for the operation of the property appraiser's office for the ensuing fiscal year beginning October 1. The property appraiser shall submit his or her budget in the manner and form required by the department. A copy of such budget shall be furnished at the same time to the board of county commissioners. The department shall, upon proper notice to the county commission and property appraiser, review the budget request and may amend or change the budget request as it deems necessary, in order that the budget be neither

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29-00209A-15 2015266__

inadequate nor excessive. On or before July 15, the department shall notify the property appraiser and the board of county commissioners of its tentative budget amendments and changes. Before ~~Prior to~~ August 15, the property appraiser and the board of county commissioners may submit additional information or testimony to the department respecting the budget. On or before August 15, the department shall make its final budget amendments or changes to the budget and shall provide notice thereof to the property appraiser and board of county commissioners. Once the department makes its final budget amendments, the budget is final and shall be funded by the county commission pursuant to s. 192.091.

(b) The Governor and Cabinet, sitting as the Administration Commission, may hear appeals from the final action of the department upon a written request being filed by the property appraiser or the presiding officer of the county commission no later than 15 days after the conclusion of the hearing held pursuant to s. 200.065(2)(d). The filing of an appeal does not relieve the county commission of its obligation to fund the department-approved final budget during the pendency of the appeal. The Administration Commission may amend the budget if it finds that any aspect of the budget is unreasonable in light of the workload of the office of the property appraiser in the county under review. The budget request as approved by the department and as amended by the commission shall become the operating budget of the property appraiser for the ensuing fiscal year beginning October 1, except that the budget so approved may subsequently be amended under the same procedure. After final approval, the property appraiser shall make no

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transfer of funds between accounts without the written approval of the department. However, all moneys received by property appraisers in complying with chapter 119 shall be accounted for in the same manner as provided for in s. 218.36, for moneys received as county fees and commissions, and any such moneys may be used and expended in the same manner and to the same extent as funds budgeted for the office and no budget amendment shall be required.

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

March 18, 2015

Senator Tom Lee, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Lee,

I am writing to respectfully request your cooperation in placing Senate Bill 266, relating to Property Appraisers, on the Committee on Appropriations agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

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

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Cindy Kynoch, Staff Director
Alicia Weiss, Committee Administrative Assistant

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

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

SB 266
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Property Appraisers

Name Martha W. Cleaver

Job Title Lobbyist

Address P.O. Box 11275
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 850/491-1945

Email marthacleaver@fapa.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Property Appraisers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 278
INTRODUCER:	Appropriations Committee; Finance and Tax Committee; and Senator Diaz de la Portilla
SUBJECT:	Downtown Development Districts
DATE:	April 10, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 278 authorizes a municipality with a population of more than 400,000 within a county defined in s. 125.011(1), F.S., to levy an ad valorem tax on all real and personal property in a downtown development district of up to 0.475 mill. The 0.475 mill is included within the municipality's regular ad valorem taxes and special assessments. In total, the municipality's millage may not exceed the 10 mills allowed under the Florida Constitution for municipal purposes.

The Revenue Estimating Conference has determined that this bill will have a negative, but insignificant recurring fiscal impact on local revenues.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Downtown Development Authorities are special districts[1] whose function is "planning, coordinating, and assisting in the implementation, revitalization, and redevelopment of a specific

[1] *See generally* Chapter 189, F.S.

downtown area of a city."[2] Fourteen DDAs are currently active in Florida, most of which were created by special act.[3]

Authorization of DDAs

The Florida Legislature first authorized DDAs in 1965 to remediate blighted business areas, halt further deterioration, and revitalize the central business districts of the larger cities where those conditions exist.[4] Municipalities with a population in excess of 250,000 were authorized to establish a DDA with certain enumerated powers.[5] The law provided that DDAs be governed by a five-member board appointed by the governing body of the municipality and chaired by the mayor of the municipality. The law authorized the governing body of the DDA to levy up to a 0.5 mill ad valorem tax on all real and personal property in the downtown district.[6]

In 1967, using the authority in Chapter 65-1090, L.O.F., the City of Miami created its DDA, and authorized it to levy an ad valorem tax.[7] The City of Miami's DDA continues today.[8]

The Florida Constitution of 1968 granted cities and counties broad home rule authority, making general laws of local application, like Chapter 65-1090, L.O.F., obsolete. In 1971, the Legislature repealed many general laws of local application passed between 1921 and 1970.[9] The Legislature declared that those repealed laws "shall become an ordinance of that municipality… subject to modification or repeal as are other ordinances."[10]

The City of Miami was the only city to create a DDA pursuant to Chapter 65-1090, L.O.F., prior to its repeal; however, between 1965 and the repeal of the general DDA authorization in 1971, four other DDAs were created by special act of the Legislature.[11] These DDAs were in Delray Beach,[12] Fort Lauderdale,[13] Ocala,[14] and West Palm Beach,[15] all of which continue today.

The Code of the City of Miami continues to authorize up to a 0.5 mill ad valorem tax on all real and personal property in the downtown district.

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[2] Section 380.031(5), F.S.
[3] The Special District Information Program within the Department of Economic Opportunity serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function. Dep't of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, *available at* https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited Apr 4, 2015).
[4] Chapter 65-1090, at 692, Laws of Fla.
[5] *Id*.
[6] Chapter 65-1090, at 699, Laws of Fla.
[7] Chapter 14, City of Miami, Florida, Code of Ordinances (1965).
[8] Dep't of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, *available at* https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited Feb 9, 2015).
[9] Chapter 71-29, Laws of Fla.
[10] Chapter 71-29, at 116, Laws of Fla. Some litigation has questioned the legality of this type of transfer. *See generally Milan Investment Group, Inc., v. City of Miami, et al.*, No. 3D09-2955 (Fla. 3d DCA 2010).
[11] Dep't of Economic Opportunity, Special District Accountability Program, *Official List of Special Districts Online*, *available at* https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited Feb 9, 2015).
[12] Chapter 71-604, Laws of Fla.
[13] Chapter 65-1541, Laws of Fla.
[14] Chapter 67-1782, Laws of Fla.
[15] Chapter 67-2170, Laws of Fla.

> The city commission is authorized to levy an additional ad valorem tax on all real and personal property in the downtown district as described in this article, not exceeding one-half mill on the dollar valuation of such property, for the purpose of financing the operation of the downtown development authority. This levy of one-half mill per dollar ad valorem tax shall be in addition to the regular ad valorem taxes and special assessments for improvements imposed by the city commission.[16]

In 1999, the Legislature enacted s. 166.0497, F.S., establishing procedures by which the Miami DDA could alter, amend or expand its boundaries.[17]

Municipal Millage Rates

Municipal millages are composed of a general nonvoted millage, a municipal debt service millage, a general voted millage, and a dependent special district millage.[18]

For the purpose of fixing millage, the Florida Statutes treat the Miami DDA as a dependent special district.[19] The millage rate levied by the Miami DDA for the fiscal year beginning October 1, 2014, and ending September 30, 2015, is 0.4780 mills.[20]

Home-Rule Charter Counties

Section 125.011(1), F.S., defines a county as:

> . . . any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The local governments authorized by ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, to operate under a home rule charter are the city of Key West and Monroe County,[21] Dade County,[22] and Hillsborough County.[23] Of these, only Miami-Dade County operates under a home-rule charter adopted pursuant to these specific provisions.[24] Miami-Dade's charter was adopted on May 21, 1957.[25]

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[16] Section 14-60, City of Miami, Florida, Code of Ordinances (2014).
[17] Chapter 99-208, Laws of Fla.
[18] Section 200.001(2), F.S.
[19] Section 200.001(8)(e), F.S.
[20] Office of the Miami Dade Property Appraiser, 2014 Adopted Millage Rates, *available at* http://www.miamidade.gov/pa/library/2014-adopted-millage-chart.pdf (last visited Apr. 4, 2015).
[21] FLA. CONST. art. VIII, s. 6, n. 2.
[22] FLA. CONST. art. VIII, s. 6, n. 3.
[23] FLA. CONST. art. VIII, s. 6, n. 4.
[24] County charters can be adopted pursuant to other provisions of the Florida Constitution. *See* FLA. CONST. art. VIII. s. 1.
[25] Miami-Dade County Florida, *The Home Rule Amendment and Charter*, *available at*

Miami-Dade County is currently the only county that comports with the description of a "county" contained in s. 125.011(1), F.S. General laws applicable to Miami-Dade County have survived various legal challenges claiming that such general laws are, in actuality, special laws.[26]

III. Effect of Proposed Changes:

Section 1 creates s. 189.056, F.S., to authorize the governing body of a municipality with a population of more than 400,000 and located within a county, as defined in s. 125.011(1), F.S., to levy an ad valorem tax on all real and personal property in a downtown development district, up to 0.475 mill.

The bill provides that the total ad valorem tax that can be levied by the DDA is limited to 0.475 mills.

The bill provides that the DDA's millage is treated as a dependent special district millage, which includes it within the 10 mill limit for municipal purposes provided by the Florida Constitution.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provisions of Art. VII, Section 18, of the Florida Constitution are implicated because this bill reduces the authority of municipalities to raise revenue. However, the amount of the reduction is estimated to be insignificant; therefore, the bill is exempt from the mandates provisions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, s. 11(a)(2) of the Florida Constitution states that there "shall be no special law or general law of local application pertaining to: . . . assessment or collection of taxes for state or county purposes."

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http://www.miamidade.gov/charter/library/charter.pdf (last visited Apr. 4, 2015), *compare* Hillsborough County Florida, *Home Rule Charter*, *available at* http://www.hillsboroughcounty.org/DocumentCenter/Home/View/376 (last visited Apr. 4, 2015) (providing that the county is chartered under Article VIII, Section 1 of the Florida Constitution as opposed to Article VIII, Section 6 of the Florida Constitution).

[26] *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259 (Fla. 3rd DCA 1992); *and see Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515 (Fla. 3rd DCA 1984), *aff'd* 464 So. 2d 535 (Fla. 1985).

A special law, as defined by the Florida Supreme Court, is a law that is "relating to or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things when classification is not permissible or the classification adopted is illegal."

In contrast, a general law "operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification." The Legislature has wide discretion in creating classifications provided the classifications are reasonable. A classification by the Legislature carries a presumption of reasonableness.

This bill authorizes certain municipalities within counties, as defined in s. 125.011(1), F.S., to levy an ad valorem tax. Three counties are potentially eligible to levy the tax in the future; however, only Miami-Dade County is currently eligible.

Section 125.011(1), F.S., is referenced in 13 chapters of Florida Statutes a total of 26 times. Legal challenges claiming that some of these general laws were, in actuality, special laws have failed.[27]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that CS/CS/SB 278 will have negative, but insignificant recurring fiscal impact. The City of Miami is authorized to levy up to 0.5 mills on all real and personal property in the district for financing the operation of the Miami DDA. The bill reduces the City of Miami DDA's authority to 0.475 mill.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[27] *See Id.*

VIII. Statutes Affected:

This bill creates section 189.056 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.)

CS/CS by Appropriations on April 9, 2015:
The committee substitute reduces the ad valorem limit that a DDA may levy from 0.5 mill to 0.475 mill.

CS by Finance and Tax on March 23, 2015:
The CS replaces the language in the bill and:

- Creates s. 189.056, F.S., which authorizes municipalities with a population over 400,000, located within a county, as defined in s. 125.011(1), F.S., to levy an ad valorem tax not to exceed 0.5 mill within the boundaries of a DDA.
- Limits all ad valorem tax for the DDA to 0.5 mill.
- Treats the DDA's millage as a dependent special district millage.

B. Amendments:

None.

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

434210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 189.056, Florida Statutes, is created to read:

189.056 Downtown development districts; ad valorem taxation.—

(1) It is the intent of the Legislature to encourage the revitalization of downtown areas within large municipalities

434210

where the societal ills associated with urban blight are most prevalent. However, in recognition of the traditionally broad home rule power exercised by charter counties, the Legislature intends that this section apply only to certain counties.

(2) The governing body of a municipality with a population of more than 400,000, as determined by the Office of Economic and Demographic Research, and located in a county as defined in s. 125.011(1) may, by ordinance, levy an ad valorem tax of up to 0.475 mill on the taxable value of all real and personal property located in a downtown development district to help finance the operation of the district. The district's millage may not exceed 0.475 mill and may not exceed the limitations contained in s. 200.001(8)(d) for dependent special districts.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to downtown development districts; creating s. 189.056, F.S.; providing legislative intent; authorizing municipalities larger than a certain population and located in certain counties to levy an ad valorem tax on real and personal property in downtown development districts; specifying the purpose of such ad valorem tax; limiting the downtown development district's ad valorem millage rate; providing an effective date.

371462

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment to Amendment (434210) (with title amendment)

Delete line 15
and insert:
(2) On or after July 1, 2015, the governing body of a municipality with a population

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

371462

Delete line 36

and insert:

in downtown development districts on or after a specified date; specifying the

462784

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment to Amendment (434210)

Delete lines 19 - 22
and insert:
0.25 mill on the taxable value of all real and personal property located in a downtown development district to help finance the operation of the district. The district's millage may not exceed 0.25 mill and may not exceed the limitations

478892

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment to Amendment (434210) (with title amendment)

Between lines 23 and 24
insert:
Section 2. The Office of Economic and Demographic Research shall develop and submit a report on the effectiveness of downtown development authorities in this state to the Senate Committee on Finance and Tax on or before December 31, 2015.

478892

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 38 and 39
insert:
requiring the Office of Economic and Demographic Research to develop and submit a report on the effectiveness of downtown development authorities in this state to the Senate Committee on Finance and Tax by a certain date;

541184

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Delete line 25

and insert:

(2) On or after July 1, 2015, the governing body of a municipality with a population

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

And the title is amended as follows:

Delete line 9

541184

and insert:

district on or after a specified date; limiting the tax to a specified percentage;

402132

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment

Delete lines 30 - 32
and insert:
district of up to 0.25 mill on the taxable value of the property located therein for the purpose of financing the operation of the district. In no event may the district's millage exceed 0.25

181400

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Margolis) recommended the following:

Senate Amendment (with title amendment)

Between lines 34 and 35
insert:
Section 2. The Office of Economic and Demographic Research shall develop and submit a report on the effectiveness of downtown development authorities in this state to the Senate Committee on Finance and Tax on or before December 31, 2015.

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

181400

And the title is amended as follows:

Between lines 10 and 11

insert:

requiring the Office of Economic and Demographic Research to develop and submit a report on the effectiveness of downtown development authorities in this state to the Senate Committee on Finance and Tax by a certain date;

By the Committee on Finance and Tax; and Senator Diaz de la Portilla

593-02770-15 2015278c1

A bill to be entitled

An act relating to downtown development districts; creating s. 189.056, F.S.; providing legislative intent; authorizing the governing body of a municipality with a certain population and located within a certain county to levy an ad valorem tax on all real and personal property in a downtown development district to finance the operation of the district; limiting the tax to a specified percentage; providing for limitation of the district's millage; providing an effective date.

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

Section 1. Section 189.056, Florida Statutes, is created to read:

189.056 Downtown Development District; Ad Valorem Taxation.—

(1) It is the intent of the Legislature to encourage the revitalization of downtown areas within large municipalities where the societal ills associated with urban blight are most prevalent. However, in recognition of the traditionally broad home rule power exercised by charter counties, the Legislature intends that this section apply only to certain counties.

(2) The governing body of a municipality with a population of more than 400,000, as determined by the Office of Economic and Demographic Research, and located within a county as defined in s. 125.011(1), may, by ordinance, levy an ad valorem tax on all real and personal property in a downtown development

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

593-02770-15 2015278c1

district of up to 0.5 mill on the taxable value of the property located therein for the purpose of financing the operation of the district. In no event may the district's millage exceed 0.5 mill. The district's millage is limited as provided in s. 200.001(8)(d) for dependent special districts.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA
40th District

March 24, 2015

The Honorable Tom Lee
Chairman
Appropriations

Via Email

Dear Chairman Lee:

Senate Bill 278, Downtown Development Districts, became a C/S in Finance and Tax on March 23. The next reference is Appropriations. I would appreciate it if that bill could be agendaed when received by Appropriations.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Ms. Cindy Kynoch, Staff Director; Ms. Alicia Weiss, Committee Administrative Assistant

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

278
Bill Number (if applicable)

Topic DOWNTOWN DEVELOPMENT DISTRICT

434210, 462784, 478892
Amendment Barcode (if applicable)

delete all

Name JAVIER BETANCOURT

Job Title DEPUTY DIRECTOR

Address 200 S. BISCAYNE BLVD
Street

Phone 305-579-6675

MIAMI FL 3313
City *State* *Zip*

Email betancoot@miamidda.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MIAMI DDA

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)

4/9/15
Meeting Date

278
Bill Number (if applicable)

434210
Amendment Barcode (if applicable)

Topic DOWNTOWN DEVELOPMENT DISTRICT

Name JAVIER BETANCOURT

Job Title DEPUTY DIRECTOR

Address 200 S. BISCAYNE BLVD.
Street

Phone 305-579-6675

MIAMI FL 33131
City *State* *Zip*

Email betancourt@miamidda.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI DDA

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)

4/9/2015
Meeting Date

Topic _____ Bill Number 278 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 326 (111894)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senators Clemens and Sachs
SUBJECT:	Substance Abuse Services
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 326 establishes processes for the voluntary certification of recovery residences and recovery residence administrators. The Department of Children and Families (DCF) is required to approve at least one credentialing entity by December 1, 2015, for the development and administration of the certification programs. The credentialing entity or entities must establish procedures for the certification of recovery residences and recovery residence administrators.

The DCF is required to publish a list of all recovery residences and recovery residence administrators on its website but the bill allows for a recovery residence or recovery residence administrator to be excluded from the list under certain circumstances.

The bill has an indeterminate fiscal impact on the DCF.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Recovery residences (also known as "sober homes") function under the premise that individuals benefit in their recovery by residing in a recovery residence. There is no universally accepted definition of a recovery residences; however unlike most halfway houses, which receive

government funding and limit the length of stays, recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.[1] Recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in evictions.[2] A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."[3]

Some recovery residences voluntarily join coalitions or associations[4] that monitor health, safety, quality, and adherence to the membership requirements for the specific coalition or association.[5] The exact number of recovery residences in Florida is currently unknown.[6] The facilities, operators, and organizational design of recovery residences vary greatly. The location of the home can be crucial to recovery, and the placement of the home in a single-family neighborhood might help residents avoid temptations that other environments can create.[7] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[8]

In 2013, the DCF conducted a study of recovery residences in Florida.[9] The DCF sought public comment relating to community concerns for recovery residences. Three widely-held concerns for the recovery residences were the safety of the residents, safety of the neighborhoods, and lack of governmental oversight.[10]

Concerns raised by participants at public meetings included:

- Residents being evicted with little or no notice;
- Unscrupulous landlords, including an alleged sexual offender who was running a women's program;
- A recovery residence owned by a bar owner and attached to the bar;

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[1] *Recovery Residence Report;* Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, (on file with the Senate Committee on Children, Families and Elder Affairs).
[2] *Id*.
[3] *Id*.
[4] *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, J Psychoactive Drugs, June 2008; 40(2): 153-159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A .available at *http://www.biomedsearch.com/article/Clean- sober-place-to-live/195982213.html*
[5] *Id*.
[6] *DCF Report* at page 6.
[7] M.M. Gorman *et al., Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families and Elder Affairs).
[8] M.M. Gorman *et al*., *supra* note 2.
[9] Ch. 2013-040, L.O.F. The 2013-2014 General Appropriations Act directed DCF to determine whether to establish a licensure/registration process for recovery residences and to provide the Governor and Legislature with a report on its findings. In its report, DCF was required to identify the number of recovery residences operating in Florida, identify benefits and concerns in connection with the operation of recovery residences, and the impact of recovery residences on effective treatment of alcoholism and on recovery residence residents and surrounding neighborhoods. DCF was also required to include the feasibility, cost, and consequences of licensing, regulating, registering, or certifying recovery residences and their operators. DCF submitted its report to the Governor and Legislature on October 1, 2013.
[10] *Recovery Residence Report*, *supra* footnote 4.

- Residents dying in recovery residences;
- Lack of regulation and harm to neighborhoods;
- Land use problems and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking;
- Mismanagement of resident funds or medication;
- Lack of security at recovery residences and abuse of residents;
- The need for background checks of recovery residence staff;
- The number of residents living in some recovery residences and the living conditions of these recovery residences;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are in existing treatment;
- False advertising;
- Medical tourism;
- The sufficiency or lack of state agency resources to enforce regulations and adequately regulate the homes;
- Allegations that medical providers are ordering medical tests and billing insurance companies unlawfully;
- Lack of uniformity in standards; and
- Alleged patient brokering in violation of Florida Statutes.[11]

Currently, recovery residences, or their functional equivalents, are not subject to DCF oversight. Furthermore, there is no statewide certification process for recovery residence administrators. The DCF does not currently identify, endorse, or certify any entities as being responsible for the certification of recovery residence professionals.

Persons that are licensed or employed in professions that serve vulnerable populations are required to be of good moral character and most are required to comply with background screening requirements under ch. 435, F.S. Currently, the level 2 background screening requirements under s 435.04, F.S. do not apply to staff employed by a licensed substance abuse treatment provider who have direct contact with adults who are not developmentally disabled.[12] This specific adult population is not considered a vulnerable population under ch. 435, F.S.,[13] and, therefore, the licensed service provider personnel who have direct contact with this specific adult population only are not subject to level 2 background screening requirements.

The DCF is aware of at least one private entity in Florida – the Florida Association of Recovery Residences (FARR) – that currently certifies recovery residences in accordance with national standards of the certification program developed by the National Alliance of Recovery Residences (NARR). Certification is voluntary, and the national standards are only for the certification of recovery residences. Recovery residence administrators are not currently certified under the existing certification program.

[11] *Id*.
[12] Section 397.451, F.S.
[13] Section 435.02(6), F.S.

Federal Fair Housing Act

The Federal Fair Housing Act of 1988 (FFHA)[14] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a "handicap" to mean mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, person convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.[15]

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.[16] Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.[17]

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[18] In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, which requires states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities."

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[19] In addition, in the *United States of America v. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[20]

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[14] 42 U.S.C. 3601 *et seq.*
[15] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 13, 2015).
[16] *See* s. 760.23(7)(b), F.S.
[17] *See* s. 760.23(9)(b), F.S.
[18] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[19] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?, available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited Feb. 6, 2014).
[20] *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., to add definitions for six new terms to implement the voluntary program for certification of recovery residences:

- Certificate of compliance;
- Certified recovery residence;
- Certified recovery residence administrator;
- Credentialing entity;
- Recovery residence; and
- Recovery residence administrator.

The bill defines the term "certified recovery residence" to mean "a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator." The bill does not define "actively managed."

The bill also defines the term "recovery residence" to mean "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment." This definition could include other types of housing, such as supportive housing for homeless persons, domestic violence shelters, or halfway houses operated by or under contract with the Florida Department of Corrections and the Florida Department of Juvenile Justice. It is unclear whether "other form of group housing" refers to the physical grouping of housing units, such as a group of apartments or townhomes, or the group living arrangements for a specific group or population, such as group homes, foster homes, or community residential homes.

Section 2 creates s, 397.487, F.S., requiring the DCF, by December 15, 2015, to approve one or more credentialing entities that will function to develop and administer a voluntary certification program for recovery residences. The bill prescribes a series of standards that would be codified for a credentialing entity and the requirements and criteria that recovery residences must meet in order to be certified. However, the bill does not specify the criteria or approval process that the DCF must use to evaluate and approve a credentialing entity. The bill does not appear to give the DCF discretion or the ability to "deny" approval of a credentialing entity. In addition, the bill does not provide the DCF with specific rule-making authority necessary to establish the requirements and process for evaluating and approving credentialing entities.

In the bill, the credentialing entities are required to establish processes for several functions, such as training and development of a code of ethics. It is unclear if this is directed toward staff and volunteers, or for individuals living in a recovery residence.

As previously noted, the term "credentialing entity" is defined as a "nonprofit organization that develops and administers professional certification programs according to nationally recognized certification and psychometric standards" but the bill does not require the certification to be based on nationally-recognized standards or psychometric standards. The certification of recovery residences would not be considered a type of professional certification but rather a type of facility or organization certification.

The credentialing entity must also establish application, inspection, and annual certification renewal fees. Application and annual certification renewal fees may not exceed $100; however, the inspection fee must reflect actual costs for inspections. An inspection must be performed before a recovery residence can be approved for certification. The credentialing entity must inspect certified recovery residences at least once a year. The bill does not specify the tasks or expenses that could be included in the cost of inspection, nor does the bill establish a maximum dollar amount for the fee that a recovery residence must pay for an inspection. The fees for application, inspection, and certification appear to be the only compensation that a credentialing entity would receive in exchange for administering recovery residences.

The bill requires that a certified recovery residence must be actively managed by a certified recovery residence administrator, which restates a portion of the definition of a certified recovery residence. The bill also requires that all applications for recovery residence certification must include the name of the certified recovery residence administrator who will actively manage the applicant recovery residence.

The bill specifies that a credentialing entity must require all owners, directors, and chief financial officers of a recovery residence applicant to pass a level 2 background screening under s. 435.04, F.S., as a condition of certification. The DCF is responsible for receiving and reviewing the results of the background screenings to determine if an employee meets the "certification requirements." A credentialing entity must deny a recovery residence's application and may revoke or suspend the certification of any owner, director, or chief financial officer, if the background screening indicates that such individual is subject to the disqualifying offenses set forth in s. 435.04(2), F.S., and does not have an exemption granted by the DCF under s. 397.4872, F.S.

The bill requires a certified recovery residence to notify its credentialing entity within three business days of the removal of the residence's administrator for any reason. After such a removal, the residence must retain a new certified recovery residence administrator within 30 days. The residence's credentialing entity is required to revoke the residence's certificate of compliance if the residence fails to meet these requirements.

If any owner, director, or chief financial officer of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., the certified recovery residence must immediately remove the person from his or her position and notify the credentialing entity within three business days after removal.

The bill also makes it a misdemeanor, under s. 775.082 or 775.083, F.S., to advertise as a "certified recovery residence" unless such residence has secured a certificate of compliance.

Section 3 creates s. 397.4871, F.S., requiring the DCF, by December 1, 2015, to approve at least one credentialing entity that will function to develop and administer a voluntary certification program for recovery residence administrators. The bill sets forth standards that would be codified for a credentialing entity and the requirements and criteria that recovery residence administrators must meet to be certified. However, the bill does not specify the criteria or approval process that the DCF must use in order to evaluate and approve a credentialing entity.

The bill requires a credentialing entity to develop and administer an education provider program to approve qualified training entities to provide pre-certification training to applicants and continuing education to certified recovery residence administrators. An approved credentialing entity or its affiliate is prohibited from providing training to applicants and continuing education to recovery residence administrators, in order to avoid a conflict of interest. The bill does not clarify how the provision of training by the approved credentialing entity would create a conflict of interest or what would constitute a conflict of interest. It is also unclear if the DCF is required under the bill to review the criteria used by a credentialing entity to evaluate and approve qualified training entities as part of the DCF's own process to evaluate and approve the credentialing entity.

A credentialing entity is required to establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225 and the annual certification renewal fee may not exceed $100.

The bill contains a provision establishing level 2 background screening for each recovery residence administrator applicant. If the background screening indicates that a recovery residence administrator is subject to a disqualifying offense set forth in s. 435.04(2), F.S, the DCF may grant an exemption from disqualification for disqualifying offenses under s. 397.4872, F.S., as created in section 4 of the bill.

The bill requires a credentialing entity to establish a certification program that "is directly related to the core competencies." The latter term is not defined. A credentialing entity is given the authority to suspend or revoke an administrator's certificate of compliance but does not provide a process for appeal.

If a certified recovery residence administrator of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., he or she must be immediately removed from his or her position, and notification must be provided to the credentialing entity within three business days after removal. The recovery residence has 30 days to retain another certified recovery residence administrator. Failure to meet these requirements will result in revocation of a residence's certificate of compliance.

The bill also makes it a misdemeanor, under s. 775.082 or 775.083, F.S., for a person to advertise himself or herself as a "certified recovery residence administrator" unless he or she has secured a certificate of compliance. The bill also provides that a certified recovery residence administrator is prohibited from actively managing more than one recovery residence at any given time.

Section 4 creates s. 397.4872, F.S., which provides exemptions to staff disqualifications and administrator ineligibility due to disqualifying offenses identified in the background screening results. The DCF may exempt a person from a disqualifying offense if it has been at least three years since the person completed or has been lawfully released from confinement, supervision, or sanction.

The bill provides that under no circumstances may a disqualification from employment be removed from, nor may an exemption be granted to, any person who is a sexual predator,[21] a career offender,[22] or sexual offender,[23] unless the requirement to register as a sexual offender has been removed under s. 943.04354, F.S.

By April 1, 2016, a credentialing entity must submit a list of certified recovery residences and certified recovery residence administrators that the credentialing entity has certified, if any, to the DCF, and the DCF must post any submitted lists on its website.

Section 5 amends s. 397.407, F.S., to prohibit licensed substance abuse treatment providers (licensed service providers) from referring a current or discharged patient to a recovery residence unless the residence holds a valid certificate of compliance as provided in s. 394.487 (created in section 2 of the bill) and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 (created in section 3 of the bill), or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. This prohibition is effective July 1, 2016. The bill specifies that a license service provider is not required to refer any patient to a recovery residence.

Sections 6, 7, 8, 9, and 10 revise statutory cross-references.

Section 11 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[21] *See* s. 775.21, F.S.
[22] *See* s. 775.261, F.S.
[23] *See* s. 943.0435, F.S.

B. Private Sector Impact:

The fiscal impact of PCS/CS/SB 326 on recovery residences or recovery residence administrators is indeterminate. Because certification is voluntary, it is unknown how many residences and administrators will seek certification. Application fees may not exceed $100 for certification of a recovery residence. Recovery residence certification also requires inspection fees to be charged a cost. Application fees for recovery residence administrators cannot exceed $225 and renewal fees cannot exceed $100.

The bill requires fingerprints be submitted to FDLE and FBI as part of the required background screening and provides these costs must be covered by prospective employees or volunteers of the credentialing entity. The cost for level 2 background screens range from $38 to $75, depending upon the selected vendor.[24]

C. Government Sector Impact:

The bill requires the DCF to review level 2 background screening results for any owners, directors, and chief financial officers of recovery residences. The DCF is also required to review all requests for exemptions from disqualifying offenses. To the extent that residences seek certification and owners, directors, and chief financial officers submit to background screening, this will increase the number of screenings and requests for exemptions that the DCF handles each year. The extent of the increase is indeterminate as the exact number of recovery residences and applicants to be certified recovery residence administrators is unknown. However, if the bill eventually creates a need for additional DCF resources, a background screening FTE position is capable of completing 7,655 screenings per year,[25] and the first-year cost for this position would be $63,917 with an annual recurring cost of $60,035, according to the DCF.[26]

VI. Technical Deficiencies:

The bill does not specify whether any owner, director, and chief financial officer of a recovery residence must undergo level 2 background screening each year as a requirement for application for renewal of a recovery residence's application. The bill does not address persons who are not required to be re-fingerprinted.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 397.407, 212.055, 394.9085, 397.405, 397.416, and 440.102.

[24] http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp, Department of Children and Families' website, accessed February 14, 2015.
[25] 2015 Agency legislative Bill Analysis, Department of Children and Families (January 27, 2015).
[26] *Id*.

This bill creates the following sections of the Florida Statutes: 397.487, 397.4871, and 397.4872.

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 Health and Human Services on March 11, 2015:
The committee substitute:

- Defines a "certified recovery residence" as a recovery residence that holds a valid certificate of compliance *and* is actively managed by a certified recovery residence administrator, as opposed to the underlying bill in which either condition would suffice;
- Includes "sexual offender/predator registry complaint policy" in the list of documents that must be submitted with an application to become a certified recovery residence;
- Removes the condition that a recovery residence seeking certification must submit a fee before being inspected by a credentialing entity;
- Removes duplicative language relating to the requirement for a credentialing entity to establish certification requirements for administrators according to nationally recognized standards;
- Requires all applications for recovery residence certification to include the name of the certified administrator who will actively manage the residence;
- Requires the DCF to notify a credentialing entity of the eligibility of prospective officers of an applicant recovery residence, based on the results of background screening, as opposed to the underlying bill in which the DCF is required to notify a credentialing entity of the results of the background screening;
- Requires a certified recovery residence to notify the credentialing entity within three business days of the removal of the residence's administrator for any reason, and the residence is given 30 days to retain a new certified administrator;
- Requires the DCF to notify a credentialing entity of the eligibility of an individual seeking recovery residence administrator certification, based on the results of background screening, as opposed to the underlying bill in which the DCF is required to notify a credentialing entity of the results of the background screening;
- Specifies that a certified administrator may not managed more than one recovery residence at a time;
- Removes from the bill all provisions relating to recovery residences being qualified by a certified administrator to receive referrals from substance abuse recovery service providers;
- Requires that any requests for exemptions to staff disqualifications or administrator ineligibility must be submitted by a recovery residence within 20 days of the denial; and
- Allows service providers to refer patients to recovery residences only if the residence is certified *and* is actively managed by a certified administrator, as opposed to the underlying bill in which either condition would suffice.

CS by Children, Families, and Elder Affairs on February 19, 2015:
The committee substitute:

- Directs the Department of Children and Families (DCF) to approve at least one credentialing entity for the voluntary certification of recovery residences by December 1, 2015;
- Limits the requirement to conduct level 2 background screening to owners, directors, and chief financial officers and to deny a recovery residence's application if any owner, director, or chief financial officer has been found guilty of, regardless of adjudication to any offense listed in s. 435.04(2), F.S. unless the DCF has issued an exemption under s. 397.4872, F.S.;
- Directs the credentialing entity to establish application, examination, and certification fees not to exceed $225 and an annual certification renewal fee not to exceed $100;
- Provides for the immediate removal a certified recovery residence administrator who is arrested or found guilty of certain offenses and provides notification requirements, timeframe within which to hire a new administrator, and revocation of certificate for failure to follow requirements;
- Provides criteria for a certified recovery residence administrator to qualify a recovery residence for referrals from licensed service providers and allows the administrator to act as a qualifying agent under certain parameters; and
- Clarifies that exemptions from disqualifying offenses for staff or administrators cannot be granted under any circumstances for certain types of offenses.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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The Committee on Appropriations (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (4) and (5), subsections (6) through (28), and subsections (29) through (39) of section 397.311, Florida Statutes, are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, present subsections (7) and (32) of that section are amended, and new subsections (4), (5), (6), (9),

(33), and (34) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11) ~~(7)~~ "Director" means the chief administrative or executive officer of a service provider or recovery residence.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.


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(38) ~~(32)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and

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volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed $100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident's recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Sexual predator and sexual offender registry compliance policy.

(f) Relapse policy.

(g) Fee schedule.

(h) Refund policy.


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(i) Eviction procedures and policy.

(j) Code of ethics.

(k) Proof of insurance.

(l) Proof of background screening.

(m) Proof of satisfactory fire, safety, and health inspections.

(4) A certified recovery residence must be actively managed by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5) Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application

and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(8) Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certification if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) A certified recovery residence must notify the credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to


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meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(9) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(16) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:


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(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

(3) A credentialing entity shall establish a certification program that:

(a) Is directly related to the core competencies.

(b) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(c) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(d) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate


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may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225. The annual certification renewal fee may not exceed $100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant’s eligibility based on the results of his or her background screening.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person’s application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator’s certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in


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that capacity, the recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may actively manage no more than three recovery residences at any given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the department within 20 days after the denial by the credentialing entity and must include a justification for the exemption.


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(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, each credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity that hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to


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that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~s. 397.311(18)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify by rule a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~s. 397.311(18)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the


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department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties


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authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a


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representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall


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provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for

Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 7. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4. ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. Subsection (8) of section 397.405, Florida


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Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(22) ~~s. 397.311(18)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt


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status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(30) ~~s. 397.311(26)~~.

Section 10. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(39) ~~s. 397.311(33)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of

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employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(39) ~~s. 397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief


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financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for suspension or revocation of certification; providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; prohibiting a certified recovery residence administrator from managing more than three recovery residences at any given time; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website;


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allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; conforming cross-references; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; requiring the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; requiring a certified recovery residence to notify the credentialing entity within a certain time of the removal of the recovery residence's certified recovery residence administrator; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the

department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet certain qualifications; requiring a certifies recovery residence to be actively managed by a certified recovery residence administrator; requiring certain applications to include specified information; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; requiring the department to notify the credentialing agency of an applicant's eligibility based on the background screening results; providing for denial, suspension, or revocation of certification; requiring a certified recovery residence to notify the credentialing entity within a certain time of the removal providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; prohibiting a certified recovery residence administrator from actively managing more than once recovery residence at the same time; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all

certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website; allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; conforming cross-references; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (4) and (5), subsections (6) through (28), and subsections (29) through (39) of section 397.311, Florida Statutes, are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, present subsections (7) and (32) are amended, and new subsections (4), (5), (6), (9), (33), and (34) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11)~~(7)~~ "Director" means the chief administrative or executive officer of a service provider or recovery residence.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.

(38)~~(32)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to

read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed

$100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident’s recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Sexual Offender/Predator Registry Compliance Policy

(f) Relapse policy.

(g) Fee schedule.

(h) Refund policy.

(i) Eviction procedures and policy.

(j) Code of ethics.

(k) Proof of insurance.

(l) Proof of background screening.

(m) Proof of satisfactory fire, safety, and health inspections.

(4) A certified recovery residence must be actively managed

by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5) Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's or chief financial officer's eligibility based on the results of a background screening.

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(8) Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certification if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) A certified recovery residence must notify the credentialing entity within 3 business days of the removal of the recovery residence's certified recovery residence administrator due to termination, resignation or any other reason. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(9) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified

recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(16) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

(3) A credentialing entity shall establish a certification program that:

(a) Is directly related to the core competencies.

(b) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(c) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(d) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225. The annual certification renewal fee may not exceed $100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of a background screening.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may not actively manage more than one recovery residence at any given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions shall be submitted in writing to the department within 20 days of the denial by the credentialing entity and must include a justification for the exemption.

(2) The department may exempt a person from ss. 397.487 (6)and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, each credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity that hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~397.311(18)~~ which are operated by a licensee. The fees from the

licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify by rule a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~397.311(18)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or

transfer of responsibilities under the license to another entity by contractual arrangement.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487, and is actively managed by a certified recovery residence administrator as provided in s. 397.4871, or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county

commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for

indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph

(4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 7. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4. ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit

religious organization or denomination providing any of the licensed service components itemized under s. 397.311(22) ~~397.311(18)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process

recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(30) ~~397.311(26)~~.

Section 10. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(39) ~~397.311(33)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(39) ~~397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 326
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Children, Families, and Elder Affairs Committee; and Senators Clemens and Sachs
SUBJECT:	Substance Abuse Services
DATE:	April 13, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 326 establishes processes for the voluntary certification of recovery residences and recovery residence administrators. The Department of Children and Families (DCF) is required to approve at least one credentialing entity by December 1, 2015, for the development and administration of the certification programs. The credentialing entity or entities must establish procedures for the certification of recovery residences and recovery residence administrators.

The DCF is required to publish a list of all recovery residences and recovery residence administrators on its website but the bill allows for a recovery residence or recovery residence administrator to be excluded from the list under certain circumstances.

The bill has an indeterminate fiscal impact on the DCF.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Recovery residences (also known as "sober homes") function under the premise that individuals benefit in their recovery by residing in a recovery residence. There is no universally accepted definition of a recovery residences; however unlike most halfway houses, which receive

government funding and limit the length of stays, recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.[1] Recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in evictions.[2] A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."[3]

Some recovery residences voluntarily join coalitions or associations[4] that monitor health, safety, quality, and adherence to the membership requirements for the specific coalition or association.[5] The exact number of recovery residences in Florida is currently unknown.[6] The facilities, operators, and organizational design of recovery residences vary greatly. The location of the home can be crucial to recovery, and the placement of the home in a single-family neighborhood might help residents avoid temptations that other environments can create.[7] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[8]

In 2013, the DCF conducted a study of recovery residences in Florida.[9] The DCF sought public comment relating to community concerns for recovery residences. Three widely-held concerns for the recovery residences were the safety of the residents, safety of the neighborhoods, and lack of governmental oversight.[10]

Concerns raised by participants at public meetings included:

- Residents being evicted with little or no notice;
- Unscrupulous landlords, including an alleged sexual offender who was running a women's program;
- A recovery residence owned by a bar owner and attached to the bar;

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[1] *Recovery Residence Report;* Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, (on file with the Senate Committee on Children, Families and Elder Affairs).
[2] *Id*.
[3] *Id*.
[4] *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* J Psychoactive Drugs, June 2008; 40(2): 153-159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A .available at *http://www.biomedsearch.com/article/Clean- sober-place-to-live/195982213.html*
[5] *Id*.
[6] *DCF Report* at page 6.
[7] M.M. Gorman *et al., Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families and Elder Affairs).
[8] M.M. Gorman *et al*., *supra* note 2.
[9] Ch. 2013-040, L.O.F. The 2013-2014 General Appropriations Act directed DCF to determine whether to establish a licensure/registration process for recovery residences and to provide the Governor and Legislature with a report on its findings. In its report, DCF was required to identify the number of recovery residences operating in Florida, identify benefits and concerns in connection with the operation of recovery residences, and the impact of recovery residences on effective treatment of alcoholism and on recovery residence residents and surrounding neighborhoods. DCF was also required to include the feasibility, cost, and consequences of licensing, regulating, registering, or certifying recovery residences and their operators. DCF submitted its report to the Governor and Legislature on October 1, 2013.
[10] *Recovery Residence Report*, *supra* footnote 4.

- Residents dying in recovery residences;
- Lack of regulation and harm to neighborhoods;
- Land use problems and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking;
- Mismanagement of resident funds or medication;
- Lack of security at recovery residences and abuse of residents;
- The need for background checks of recovery residence staff;
- The number of residents living in some recovery residences and the living conditions of these recovery residences;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are in existing treatment;
- False advertising;
- Medical tourism;
- The sufficiency or lack of state agency resources to enforce regulations and adequately regulate the homes;
- Allegations that medical providers are ordering medical tests and billing insurance companies unlawfully;
- Lack of uniformity in standards; and
- Alleged patient brokering in violation of Florida Statutes.[11]

Currently, recovery residences, or their functional equivalents, are not subject to DCF oversight. Furthermore, there is no statewide certification process for recovery residence administrators. The DCF does not currently identify, endorse, or certify any entities as being responsible for the certification of recovery residence professionals.

Persons that are licensed or employed in professions that serve vulnerable populations are required to be of good moral character and most are required to comply with background screening requirements under ch. 435, F.S. Currently, the level 2 background screening requirements under s 435.04, F.S. do not apply to staff employed by a licensed substance abuse treatment provider who have direct contact with adults who are not developmentally disabled.[12] This specific adult population is not considered a vulnerable population under ch. 435, F.S.,[13] and, therefore, the licensed service provider personnel who have direct contact with this specific adult population only are not subject to level 2 background screening requirements.

The DCF is aware of at least one private entity in Florida – the Florida Association of Recovery Residences (FARR) – that currently certifies recovery residences in accordance with national standards of the certification program developed by the National Alliance of Recovery Residences (NARR). Certification is voluntary, and the national standards are only for the certification of recovery residences. Recovery residence administrators are not currently certified under the existing certification program.

[11] *Id*.
[12] Section 397.451, F.S.
[13] Section 435.02(6), F.S.

Federal Fair Housing Act

The Federal Fair Housing Act of 1988 (FFHA)[14] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a "handicap" to mean mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, person convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.[15]

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.[16] Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.[17]

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[18] In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, which requires states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities."

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[19] In addition, in the *United States of America v. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[20]

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[14] 42 U.S.C. 3601 *et seq.*
[15] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 13, 2015).
[16] *See* s. 760.23(7)(b), F.S.
[17] *See* s. 760.23(9)(b), F.S.
[18] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[19] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?, available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited Feb. 6, 2014).
[20] *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., to add definitions for six new terms to implement the voluntary program for certification of recovery residences:

- Certificate of compliance;
- Certified recovery residence;
- Certified recovery residence administrator;
- Credentialing entity;
- Recovery residence; and
- Recovery residence administrator.

The bill defines the term "certified recovery residence" to mean "a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator." The bill does not define "actively managed."

The bill also defines the term "recovery residence" to mean "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment." This definition could include other types of housing, such as supportive housing for homeless persons, domestic violence shelters, or halfway houses operated by or under contract with the Florida Department of Corrections and the Florida Department of Juvenile Justice. It is unclear whether "other form of group housing" refers to the physical grouping of housing units, such as a group of apartments or townhomes, or the group living arrangements for a specific group or population, such as group homes, foster homes, or community residential homes.

Section 2 creates s, 397.487, F.S., requiring the DCF, by December 15, 2015, to approve one or more credentialing entities that will function to develop and administer a voluntary certification program for recovery residences. The bill prescribes a series of standards that would be codified for a credentialing entity and the requirements and criteria that recovery residences must meet in order to be certified. However, the bill does not specify the criteria or approval process that the DCF must use to evaluate and approve a credentialing entity. The bill does not appear to give the DCF discretion or the ability to "deny" approval of a credentialing entity. In addition, the bill does not provide the DCF with specific rule-making authority necessary to establish the requirements and process for evaluating and approving credentialing entities.

In the bill, the credentialing entities are required to establish processes for several functions, such as training and development of a code of ethics. It is unclear if this is directed toward staff and volunteers, or for individuals living in a recovery residence.

As previously noted, the term "credentialing entity" is defined as a "nonprofit organization that develops and administers professional certification programs according to nationally recognized certification and psychometric standards" but the bill does not require the certification to be based on nationally-recognized standards or psychometric standards. The certification of recovery residences would not be considered a type of professional certification but rather a type of facility or organization certification.

The credentialing entity must also establish application, inspection, and annual certification renewal fees. Application and annual certification renewal fees may not exceed $100; however, the inspection fee must reflect actual costs for inspections. An inspection must be performed before a recovery residence can be approved for certification. The credentialing entity must inspect certified recovery residences at least once a year. The bill does not specify the tasks or expenses that could be included in the cost of inspection, nor does the bill establish a maximum dollar amount for the fee that a recovery residence must pay for an inspection. The fees for application, inspection, and certification appear to be the only compensation that a credentialing entity would receive in exchange for administering recovery residences.

The bill requires that a certified recovery residence must be actively managed by a certified recovery residence administrator, which restates a portion of the definition of a certified recovery residence. The bill also requires that all applications for recovery residence certification must include the name of the certified recovery residence administrator who will actively manage the applicant recovery residence.

The bill specifies that a credentialing entity must require all owners, directors, and chief financial officers of a recovery residence applicant to pass a level 2 background screening under s. 435.04, F.S., as a condition of certification. The DCF is responsible for receiving and reviewing the results of the background screenings to determine if an employee meets the "certification requirements." A credentialing entity must deny a recovery residence's application and may revoke or suspend the certification of any owner, director, or chief financial officer, if the background screening indicates that such individual is subject to the disqualifying offenses set forth in s. 435.04(2), F.S., and does not have an exemption granted by the DCF under s. 397.4872, F.S.

The bill requires a certified recovery residence to notify its credentialing entity within three business days of the removal of the residence's administrator for any reason. After such a removal, the residence must retain a new certified recovery residence administrator within 30 days. The residence's credentialing entity is required to revoke the residence's certificate of compliance if the residence fails to meet these requirements.

If any owner, director, or chief financial officer of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., the certified recovery residence must immediately remove the person from his or her position and notify the credentialing entity within three business days after removal.

The bill also makes it a misdemeanor, under s. 775.082 or 775.083, F.S., to advertise as a "certified recovery residence" unless such residence has secured a certificate of compliance.

Section 3 creates s. 397.4871, F.S., requiring the DCF, by December 1, 2015, to approve at least one credentialing entity that will function to develop and administer a voluntary certification program for recovery residence administrators. The bill sets forth standards that would be codified for a credentialing entity and the requirements and criteria that recovery residence administrators must meet to be certified. However, the bill does not specify the criteria or approval process that the DCF must use in order to evaluate and approve a credentialing entity.

The bill requires a credentialing entity to develop and administer an education provider program to approve qualified training entities to provide pre-certification training to applicants and continuing education to certified recovery residence administrators. An approved credentialing entity or its affiliate is prohibited from providing training to applicants and continuing education to recovery residence administrators, in order to avoid a conflict of interest. The bill does not clarify how the provision of training by the approved credentialing entity would create a conflict of interest or what would constitute a conflict of interest. It is also unclear if the DCF is required under the bill to review the criteria used by a credentialing entity to evaluate and approve qualified training entities as part of the DCF's own process to evaluate and approve the credentialing entity.

A credentialing entity is required to establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225 and the annual certification renewal fee may not exceed $100.

The bill contains a provision establishing level 2 background screening for each recovery residence administrator applicant. If the background screening indicates that a recovery residence administrator is subject to a disqualifying offense set forth in s. 435.04(2), F.S, the DCF may grant an exemption from disqualification for disqualifying offenses under s. 397.4872, F.S., as created in section 4 of the bill.

The bill requires a credentialing entity to establish a certification program that "is directly related to the core competencies." The latter term is not defined. A credentialing entity is given the authority to suspend or revoke an administrator's certificate of compliance but does not provide a process for appeal.

If a certified recovery residence administrator of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., he or she must be immediately removed from his or her position, and notification must be provided to the credentialing entity within three business days after removal. The recovery residence has 30 days to retain another certified recovery residence administrator. Failure to meet these requirements will result in revocation of a residence's certificate of compliance.

The bill also makes it a misdemeanor, under s. 775.082 or 775.083, F.S., for a person to advertise himself or herself as a "certified recovery residence administrator" unless he or she has secured a certificate of compliance. The bill also provides that a certified recovery residence administrator is prohibited from actively managing more than three recovery residences at any given time.

Section 4 creates s. 397.4872, F.S., which provides exemptions to staff disqualifications and administrator ineligibility due to disqualifying offenses identified in the background screening results. The DCF may exempt a person from a disqualifying offense if it has been at least three years since the person completed or has been lawfully released from confinement, supervision, or sanction.

The bill provides that under no circumstances may a disqualification from employment be removed from, nor may an exemption be granted to, any person who is a sexual predator,[21] a career offender,[22] or sexual offender,[23] unless the requirement to register as a sexual offender has been removed under s. 943.04354, F.S.

By April 1, 2016, a credentialing entity must submit a list of certified recovery residences and certified recovery residence administrators that the credentialing entity has certified, if any, to the DCF, and the DCF must post any submitted lists on its website.

Section 5 amends s. 397.407, F.S., to prohibit licensed substance abuse treatment providers (licensed service providers) from referring a current or discharged patient to a recovery residence unless the residence holds a valid certificate of compliance as provided in s. 394.487 (created in section 2 of the bill) and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 (created in section 3 of the bill), or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. This prohibition is effective July 1, 2016. The bill specifies that a license service provider is not required to refer any patient to a recovery residence.

Sections 6, 7, 8, 9, and 10 revise statutory cross-references.

Section 11 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[21] *See* s. 775.21, F.S.
[22] *See* s. 775.261, F.S.
[23] *See* s. 943.0435, F.S.

B. Private Sector Impact:

The fiscal impact of CS/CS/SB 326 on recovery residences or recovery residence administrators is indeterminate. Because certification is voluntary, it is unknown how many residences and administrators will seek certification. Application fees may not exceed $100 for certification of a recovery residence. Recovery residence certification also requires inspection fees to be charged a cost. Application fees for recovery residence administrators cannot exceed $225 and renewal fees cannot exceed $100.

The bill requires fingerprints be submitted to FDLE and FBI as part of the required background screening and provides these costs must be covered by prospective employees or volunteers of the credentialing entity. The cost for level 2 background screens range from $38 to $75, depending upon the selected vendor.[24]

C. Government Sector Impact:

The bill requires the DCF to review level 2 background screening results for any owners, directors, and chief financial officers of recovery residences. The DCF is also required to review all requests for exemptions from disqualifying offenses. To the extent that residences seek certification and owners, directors, and chief financial officers submit to background screening, this will increase the number of screenings and requests for exemptions that the DCF handles each year. The extent of the increase is indeterminate as the exact number of recovery residences and applicants to be certified recovery residence administrators is unknown. However, if the bill eventually creates a need for additional DCF resources, a background screening FTE position is capable of completing 7,655 screenings per year,[25] and the first-year cost for this position would be $63,917 with an annual recurring cost of $60,035, according to the DCF.[26]

VI. Technical Deficiencies:

The bill does not specify whether any owner, director, and chief financial officer of a recovery residence must undergo level 2 background screening each year as a requirement for application for renewal of a recovery residence's application. The bill does not address persons who are not required to be re-fingerprinted.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 397.407, 212.055, 394.9085, 397.405, 397.416, and 440.102.

[24] http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp, Department of Children and Families' website, accessed February 14, 2015.
[25] 2015 Agency legislative Bill Analysis, Department of Children and Families (January 27, 2015).
[26] *Id*.

This bill creates the following sections of the Florida Statutes: 397.487, 397.4871, and 397.4872.

IX. Additional Information:

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

CS/CS by Appropriations on April 9, 2015:
The committee substitute:

- Defines a "certified recovery residence" as a recovery residence that holds a valid certificate of compliance *and* is actively managed by a certified recovery residence administrator, as opposed to the underlying bill in which either condition would suffice;
- Includes "sexual offender/predator registry complaint policy" in the list of documents that must be submitted with an application to become a certified recovery residence;
- Removes the condition that a recovery residence seeking certification must submit a fee before being inspected by a credentialing entity;
- Removes duplicative language relating to the requirement for a credentialing entity to establish certification requirements for administrators according to nationally recognized standards;
- Requires all applications for recovery residence certification to include the name of the certified administrator who will actively manage the residence;
- Requires the DCF to notify a credentialing entity of the eligibility of prospective officers of an applicant recovery residence, based on the results of background screening, as opposed to the underlying bill in which the DCF is required to notify a credentialing entity of the results of the background screening;
- Requires a certified recovery residence to notify the credentialing entity within three business days of the removal of the residence's administrator for any reason, and the residence is given 30 days to retain a new certified administrator;
- Requires the DCF to notify a credentialing entity of the eligibility of an individual seeking recovery residence administrator certification, based on the results of background screening, as opposed to the underlying bill in which the DCF is required to notify a credentialing entity of the results of the background screening;
- Specifies that a certified administrator may actively manage up to three recovery residences at any given time;
- Removes from the bill all provisions relating to recovery residences being qualified by a certified administrator to receive referrals from substance abuse recovery service providers;
- Requires that any requests for exemptions to staff disqualifications or administrator ineligibility must be submitted by a recovery residence within 20 days of the denial; and
- Allows service providers to refer patients to recovery residences only if the residence is certified *and* is actively managed by a certified administrator, as opposed to the underlying bill in which either condition would suffice.

CS by Children, Families, and Elder Affairs on February 19, 2015:
The committee substitute:

- Directs the Department of Children and Families (DCF) to approve at least one credentialing entity for the voluntary certification of recovery residences by December 1, 2015;
- Limits the requirement to conduct level 2 background screening to owners, directors, and chief financial officers and to deny a recovery residence's application if any owner, director, or chief financial officer has been found guilty of, regardless of adjudication to any offense listed in s. 435.04(2), F.S. unless the DCF has issued an exemption under s. 397.4872, F.S.;
- Directs the credentialing entity to establish application, examination, and certification fees not to exceed $225 and an annual certification renewal fee not to exceed $100;
- Provides for the immediate removal a certified recovery residence administrator who is arrested or found guilty of certain offenses and provides notification requirements, timeframe within which to hire a new administrator, and revocation of certificate for failure to follow requirements;
- Provides criteria for a certified recovery residence administrator to qualify a recovery residence for referrals from licensed service providers and allows the administrator to act as a qualifying agent under certain parameters; and
- Clarifies that exemptions from disqualifying offenses for staff or administrators cannot be granted under any circumstances for certain types of offenses.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2015	.	
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The Committee on Appropriations (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (4) and (5), subsections (6) through (28), and subsections (29) through (39) of section 397.311, Florida Statutes, are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, present subsections (7) and (32) of that section are amended, and new subsections (4), (5), (6), (9),

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(33), and (34) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11) ~~(7)~~ "Director" means the chief administrative or executive officer of a service provider or recovery residence.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.

(38) ~~(32)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and

volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed $100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident’s recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Sexual predator and sexual offender registry compliance policy.

(f) Relapse policy.

(g) Fee schedule.

(h) Refund policy.

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(i) Eviction procedures and policy.

(j) Code of ethics.

(k) Proof of insurance.

(l) Proof of background screening.

(m) Proof of satisfactory fire, safety, and health inspections.

(4) A certified recovery residence must be actively managed by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5) Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application

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and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(8) Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certification if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) A certified recovery residence must notify the credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to

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meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(9) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(16) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

(3) A credentialing entity shall establish a certification program that:

(a) Is directly related to the core competencies.

(b) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(c) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(d) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate

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may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225. The annual certification renewal fee may not exceed $100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of his or her background screening.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in

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that capacity, the recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may actively manage no more than three recovery residences at any given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the department within 20 days after the denial by the credentialing entity and must include a justification for the exemption.

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(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, each credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity that hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to

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that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~s. 397.311(18)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify by rule a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~s. 397.311(18)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the

department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties

authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a

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representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall


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provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for

Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 7. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4. ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. Subsection (8) of section 397.405, Florida


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Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(22) ~~s. 397.311(18)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt

status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(30) ~~s. 397.311(26)~~.

Section 10. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(39) ~~s. 397.311(33)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of

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employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(39) ~~s. 397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief

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financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for suspension or revocation of certification; providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; prohibiting a certified recovery residence administrator from managing more than three recovery residences at any given time; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website;

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allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; conforming cross-references; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and Senator Clemens

586-01708-15 2015326c1

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for

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

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certifying recovery residence administrators who meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website; allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; conforming cross-references; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (7) and (32) of section

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

397.311, Florida Statutes, are amended, present subsections (4) and (5), present subsections (6) through (28), and present subsections (29) through (39) are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, new subsections (4), (5), (6), (9), (33), and (34) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11)~~(7)~~ "Director" means the chief administrative or executive officer of a service provider or recovery residence.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and

drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for the overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.

(38)~~(32)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed $100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident’s recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Relapse policy.

(f) Fee schedule.

(g) Refund policy.

(h) Eviction procedures and policy.

(i) Code of ethics.

(j) Proof of insurance.

(k) Proof of background screening.

(l) Proof of satisfactory fire, safety, and health inspections.

(4) Upon receiving a completed application and fee, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(5) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. The department shall notify the credentialing entity of the results of the background screenings. A credentialing entity shall deny a recovery residence’s application if any owner, director, or chief financial officer has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), unless the department has issued an exemption under s. 397.4872.

(6) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence’s application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(7) Onsite followup monitoring of any certified recovery residence may be conducted by the credentialing entity to

determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certificate of compliance if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) If any owner, director, or chief financial officer of a certified recovery residence is arrested or found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(8) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created

to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(16) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements according to nationally recognized certification and psychometric standards.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training

to applicants and continuing education opportunities to certified persons.

(3) A credentialing entity shall establish a certification program that:

(a) Is established according to nationally recognized certification and psychometric standards.

(b) Is directly related to the core competencies.

(c) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(d) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(e) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fees may not exceed $225. The annual certification renewal fee may not exceed $100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. The department shall

notify the credentialing entity of the results of the background screenings. A credentialing entity shall deny a person's application if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), unless the department has issued an exemption under s. 397.4872.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested or found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), the recovery residence shall immediately remove the recovery residence administrator from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence which fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may qualify a recovery residence for referrals under s. 397.407(11) if the certified recovery residence administrator:

(a) Registers with the credentialing entity the recovery residence he or she intends to qualify. The registration shall include:

1. The name and address of the recovery residence, including the fictitious name, if any, under which the recovery residence is doing business.

2. The name of the owners and any officers of the recovery residence.

(b) Submits an affidavit attesting that he or she is actively managing the recovery residence and that he or she is not utilizing his or her recovery residence administrator's certificate of compliance to qualify any additional recovery residences under this subsection.

(9) A certified recovery residence administrator must notify the credentialing entity within 3 business days after the termination of the certified recovery residence administrator's qualification of the recovery residence due to resignation or any other reason.

(10) A certified recovery residence administrator may act as a qualifying agent for only one recovery residence at any

given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions from staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions shall be submitted in writing to the department and include a justification for the exemption.

(2) The department may exempt a person from ss. 397.487(5) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, a credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity which hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence's or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list

of all recovery residences that hold a valid certificate of compliance or that have been qualified pursuant to s. 397.4871(10). The department shall also publish on its website a list of all recovery residence administrators that hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list if the recovery residence administrator submits a written request to the department.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~397.311(18)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify by rule a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one

license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~397.311(18)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 or is actively managed by a certified recovery residence administrator as provided in s. 397.4871, or both, or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence.

However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law.

The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or

rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or

denied, by the county public general hospital.

Section 7. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4. ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(22) ~~397.311(18)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or

physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(30) ~~397.311(26)~~.

Section 10. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(39) ~~397.311(33)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(39) ~~397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS
27th District

March 16, 2015

Senator Tom Lee, Chair
Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Lee:

I respectfully request that SB 326 – Substance Abuse Services be added to the agenda for the next Committee on Appropriations meeting.

SB 326 will allow the state to monitor sober transitional living homes by creating a voluntary certification program for these types of residences. Currently, sober homes are unregulated in the state. The bill will provide state oversight to ensure that some of our most vulnerable residents are protected and have a safe environment while in recovery.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:
❒ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
❒ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
4/9/15	326

Topic 326 — Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address Po Box 1757 — Phone 850 701 3761

Street

City Tallahassee — State FL — Zip 32302 — Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12

326

Meeting Date

Bill Number (if applicable)

Topic Substance abuse

Amendment Barcode (if applicable)

Name Susan Harbin

Job Title Legislative Advocate

Address _____ Phone _____

Street

City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4.9.15
Meeting Date

326
Bill Number (if applicable)

Topic Sona Thames

Amendment Barcode (if applicable)

Name Albert Balido

Job Title

Address 201 W. Park Ave #100
Street

Jall. FL 32301
City *State* *Zip*

Phone 850-247-3446

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/9/15
Meeting Date

326
Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Mat Forrest

Job Title

Address 403 E. Park Ave.
Street

Phone 850-577-0444

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Delray Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/9/15
Meeting Date

326
Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title

Address 205 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 954-648-1204

Email Candice@ericksconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PALM Beach County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4-9-15
Meeting Date

326
Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Jordan Connors

Job Title

Address 2145 SW Cape Cod Drive
Street
Port St. Lucie FL 34953
City *State* *Zip*

Phone 7724186068

Email jordan@jordanconnors.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Port St. Lucie

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)

4/9/2015
Meeting Date

Topic _____ Bill Number 326 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 340
INTRODUCER:	Appropriations Committee and Senator Grimsley
SUBJECT:	Crisis Stabilization Services
DATE:	April 10, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Fav/CS**

I. Summary:

CS/SB 340 directs the Department of Children and Families (DCF) to develop, implement, and maintain standards under which behavioral health managing entities[1] must collect utilization data from public receiving facilities that are operating under DCF designation as crisis stabilization units where emergency mental health care is provided. Managing entities must comply with the bill's requirements for data collection by August 1, 2015.

The bill requires managing entities to collect specified utilization data in real time or at least daily. Managing entities must perform reconciliations monthly and annually to ensure data accuracy. After ensuring data accuracy, managing entities must submit data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database for the purpose of analyzing the payments for and the use of state-funded crisis stabilization services on a statewide basis and on an individual public receiving facility basis.

The bill requires the DCF to adopt rules and submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives with details on the bill's implementation and an analysis of the data collected.

For the 2015-2016 fiscal year, the bill appropriates $175,000 in nonrecurring funds from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the DCF to implement the bill.

The bill provides that it takes effect upon becoming law.

[1] *See* s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida and is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

II. Present Situation:

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to voluntary or involuntary patients. Involuntary patients must be taken to one of the state's designated "receiving facilities." Receiving facilities are defined by the Florida Mental Health Act (ss. 394.451 – 394.4789, F.S., also known as the Baker Act) and are often referred to as Baker Act Receiving Facilities.[2]

The Florida Legislature enacted the Baker Act in 1971 to revise the state's mental health commitment laws. The Baker Act substantially strengthened the due process and civil rights of persons in mental health facilities and those alleged to be in need of emergency evaluation and treatment. A major intent of the Baker Act was to increase community care of persons with mental illnesses.[3]

The purpose of receiving facilities is to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. Law enforcement officers usually transport individuals requiring involuntary Baker Act examinations to the nearest receiving facility.[4] However, involuntary examinations may be initiated by a court order, a certificate executed by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, clinical social worker, or by self-presentation.[5] A facility must accept individuals brought by a law enforcement officer for involuntary examination, regardless of bed availability.[6]

Receiving facilities may be either public or private but only facilities that have a contract with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.[7] Transfers of individuals between two public facilities, from a public facility to a private facility, and from a private facility to a public facility are permitted.[8] Funds appropriated solely for Baker Act services may pay for services to diagnostically and financially-eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalizations for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit for short-term services persons brought to the unit under the Baker Act as well as those who present themselves for services.[9] CSUs provide services 24 hours a day, seven days a week, through a team of

[2] Section 394.455(25) (26), F.S.
[3] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[4] *Id.*
[5] Section 394.4655(2), F.S.
[6] Section 394.462, F.S.
[7] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[8] Section 394.4685, F.S.
[9] Section 394.875, F.S.

mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.[10]

Managing entities have assumed the responsibility for purchasing, managing, and monitoring behavioral health services in the state. The DCF's contracts with managing entities are required to include payment methods that promote flexibility, efficiency, and accountability. Managing entities must follow current statutes and rules that require CSUs be paid for bed availability, rather than utilization by clients.

For fiscal year 2014-2015, $76.8 million is provided for CSUs, Baker Act, and Inpatient Crisis Services.[11] As of February 6, 2015, there were 63 public receiving facilities with 2,052 beds and 67 private receiving facilities with 3,371 beds.[12] Based on the Florida Mental Health Institute's Annual Report of Baker Act Data Summary for 2013, there were 171,744 involuntary examinations initiated in Florida.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 394.9082, F.S., by creating a new subsection (10). The bill directs the DCF to develop, implement, and maintain standards under which a behavioral health managing entity must collect utilization data from all public receiving facilities within its geographic service area. For those purposes, the bill defines "public receiving facility" as an entity that meets the licensure requirements of and is designated by the DCF to operate as a public receiving facility under s. 394.875, F.S., and which is operating as a licensed crisis stabilization unit.

The bill requires the DCF to develop standards for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards must allow for compatibility of data and data transmittal. The DCF must require managing entities to comply with the bill's requirements for data collection by August 1, 2015.

A managing entity must require a public receiving facility within its provider network to submit data, in real time or at least daily, for:

- All admissions and discharges of clients receiving public receiving facility services who qualify as indigent as defined in s. 394.4787, F.S.; and
- Current active census of total licensed beds, the number of beds purchased by the DCF, the number of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding.

A managing entity must require a public receiving facility within its provider network to submit data on a monthly basis which aggregates the daily data previously submitted. The managing entity must reconcile the data in the monthly submission to the daily data to check for

[10] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[11] Information received from the Department of Children and Families on February 10, 2015.
[12] *Id.*
[13] Christy, A. (2014). Report of 2013 Baker Act Data. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

consistency. If the monthly aggregate data is inconsistent with the daily data, the managing entity must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

A managing entity must require a public receiving facility within its provider network to submit data on an annual basis which aggregates the monthly data previously submitted and reconciled. The managing entity must reconcile the data in the annual submission to the monthly data to check for consistency. If the annual aggregate data is inconsistent with the reconciled monthly data, the managing entity must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

After ensuring accurate data, the managing entity must submit the data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an individual public receiving facility basis.

The DCF is required to adopt rules to administer the bill's provisions. The DCF is required to submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides details on the bill's implementation, including the status of the data collection process and a detailed analysis of the data collected.

The bill's implementation is subject to specific appropriations provided to the DCF under the General Appropriations Act.

Section 2 provides an appropriation for the 2015-2016 fiscal year of $175,000 in nonrecurring funds from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the DCF to implement the bill.

Section 3 provides that 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:

Under the parameters created by CS/SB 340, public receiving facilities and managing entities may experience an indeterminate amount of costs to submit and reconcile data.

C. Government Sector Impact:

For the 2015-2016 fiscal year, the bill appropriates $175,000 in nonrecurring funds from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the Department of Children and Families (DCF) to implement the bill.

The DCF reports that two managing entities currently have the information technology capable of performing the data reporting functions required under the bill, and the DCF estimates that approximately $175,000 would be required to expand the data capabilities of the five remaining managing entities.[14] The DCF may also experience an indeterminate amount of costs for establishing and maintaining the statewide database under the specified requirements and parameters of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 394.9082 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.)

CS by Appropriations on April 9, 2015:
The CS removes from the bill the provision that the bill's implementation is subject to specific appropriations provided to the Department of Children and Families (DCF) in the General Appropriations Act. Instead, the CS provides a nonrecurring appropriation for the 2015-2016 fiscal year of $175,000 from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the DCF to implement the bill.

[14] The Department of Children and Families, *2015 Agency Legislative Bill Analysis, HB 79,* February 18, 2015.

B. Amendments:

None.

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

550380

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 97 - 99

and insert:

Section 2. For the 2015-2016 fiscal year, the sum of $175,000 in nonrecurring funds is appropriated from the Alcohol, Drug Abuse, and Mental Health Trust Fund to the Department of Children and Families to implement this act.

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

And the title is amended as follows:


550380

Delete lines 20 - 21

and insert:

an appropriation; providing an effective date.

By Senator Grimsley

21-00441-15 2015340__

A bill to be entitled

An act relating to crisis stabilization services; amending s. 394.9082, F.S.; requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; defining the term "public receiving facility"; requiring the department to require compliance by managing entities by a specified date; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes; requiring managing entities to reconcile data to ensure accuracy; requiring managing entities to submit certain data to the department within specified timeframes; requiring the department to create a statewide database; requiring the department to adopt rules; requiring the department to submit an annual report to the Governor and the Legislature; providing that implementation is subject to specific appropriations; providing an effective date.

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

Section 1. Present subsections (10) and (11) of section 394.9082, Florida Statutes, are renumbered as subsections (11) and (12), respectively, and a new subsection (10) is added to that section, to read:

394.9082 Behavioral health managing entities.—

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

21-00441-15 2015340__

(10) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographic service area. As used in this subsection, the term "public receiving facility" means an entity that meets the licensure requirements of and is designated by the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols for managing entities and public receiving facilities to use in the collection, storage, transmittal, and analysis of data. The standards and protocols must allow for compatibility of data and data transmittal between public receiving facilities, managing entities, and the department for the implementation and requirements of this subsection. The department shall require managing entities contracted under this section to comply with this subsection by August 1, 2015.

(b) A managing entity shall require a public receiving facility within its provider network to submit data to the managing entity, in real time or at least daily, for:

1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787; and

2. Current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding.

(c) A managing entity shall require a public receiving

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

facility within its provider network to submit data, on a monthly basis, to the managing entity which aggregates the daily data submitted under paragraph (b). The managing entity shall reconcile the data in the monthly submission to the data received by the managing entity under paragraph (b) to check for consistency. If the monthly aggregate data submitted by a public receiving facility under this paragraph is inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections as necessary to ensure accurate data.

(d) A managing entity shall require a public receiving facility within its provider network to submit data, on an annual basis, to the managing entity which aggregates the data submitted and reconciled under paragraph (c). The managing entity shall reconcile the data in the annual submission to the data received and reconciled by the managing entity under paragraph (c) to check for consistency. If the annual aggregate data submitted by a public receiving facility under this paragraph is inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections as necessary to ensure accurate data.

(e) After ensuring accurate data under paragraphs (c) and (d), the managing entity shall submit the data to the department on a monthly and an annual basis. The department shall create a statewide database for the data described under paragraph (b) and submitted under this paragraph for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an

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

individual public receiving facility basis.

(f) The department shall adopt rules to administer this subsection.

(g) The department shall submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides details on the implementation of this subsection, including the status of the data collection process and a detailed analysis of the data collected under this subsection.

(h) The implementation of this subsection is subject to specific appropriations provided to the department under the General Appropriations Act.

Section 2. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

SENATE APPROPRIATIONS
RECEIVED
15 APR -1 PM 6:38
CHAIRMAN
STAFF DIR. STAFF

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #340**, relating to Crisis Stabilization Services, **Senate Bill #420**, relating to Animal Control, and **Senate Bill #682**, relating to Transitional Living Facilities be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 420
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Grimsley
SUBJECT:	Animal Control
DATE:	April 10, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Stearns	Yeatman	CA	**Fav/CS**
3.	Blizzard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 420 provides a procedure for adopting or humanely disposing of impounded livestock (excluding cattle) as an alternative to sale or auction. Notice of the impounded livestock must be provided in specified methods by county sheriffs or animal control centers. The bill requires the sheriff or animal control center to establish fees and be responsible for damages caused while impounding the livestock. The bill grants municipalities with certified animal control officers the same powers as counties and societies or associations for investigating animal cruelty cases. Finally, the bill provides additional, supplemental, and alternative laws for enforcing county or municipal codes or ordinances, but clarifies that it does not prohibit a county or municipality from enforcing its own codes or ordinances by any other means.

The bill has no fiscal impact on state revenues or expenditures.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Florida Fence Law

Before the enactment of fencing laws, Florida was an open-range state. In the 1949 Legislative Session, Governor Fuller Warren approved SB 34 which required owners of livestock to prevent their animals from "running at large or straying upon public roads." The act encouraged ranchers

to build fences and contain wandering livestock. Sometimes known as "the fence law," historians consider SB 34 the final measure in closing the open range.[1]

Under the provision of ch. 588, F.S., every owner who intentionally, willfully, carelessly, or negligently suffers or permits their livestock to run at large or stray upon Florida public roads is liable for any resulting injuries or property damage and may be guilty of a second degree misdemeanor.[2] Criminal penalties may include a term of imprisonment not exceeding 60 days and/or a fine of as much as $500.[3]

Auctions

Current law requires animal control agencies to auction impounded livestock regardless of the circumstances. Often this is not financially feasible, and it may prevent more timely solutions that would result in better conditions for the animals. The auction process does not allow the agency to control the quality of the animals' placement. Known animal abusers have purchased animals at auction because current law does not prohibit that. If the animals are adopted, there are quality control mechanisms available.[4]

Municipal Issues

Some authority is reserved under current animal control statutes for counties and judicially appointed animal control officers because those officers are required to receive training. City animal control officers are not given the same powers because they are not required to be trained. These powers are related to the authority to seize or petition for custody of animals in criminal animal cruelty cases.

Civil Citation Procedures

Section 828.27, F.S., outlines the procedures for processing and collection of animal control citations. However, the statute may not provide the same flexibility that local governments have in other code enforcement situations. It is unclear whether the more flexible procedures authorized in ch. 162, F.S., apply to animal control.[5]

III. Effect of Proposed Changes:

Section 1 amends s. 588.17, F.S., to authorize adoption and humane disposal as options for dealing with impounded livestock (excluding cattle), in addition to the currently authorized options of sale or auction. The bill also provides the county animal control center with notification requirements in an effort to identify the owner of the impounded livestock. The bill provides that impounded livestock may not be auctioned or disposed of until at least three days after impounding.

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[1] *Stray Livestock Liability Laws*, http://www.floridamemory.com/blog/2012/06/07/stray-livestock-liability-laws/ (last visited on Feb. 20, 2015).
[2] Sections 588.15 and 588.24, F.S.
[3] Section 588.24, F.S., citing sections 775.082 and 775.083, F.S.
[4] Florida Animal Control Association interview February 9, 2015 conducted by the Agriculture Committee.
[5] *Id.*

Section 2 amends s. 588.18, F.S., to require a county animal control center to establish fees and to be responsible for damages caused while impounding the livestock.

Section 3 conforms s. 588.23, F.S., to changes made in the previous sections of the bill.

Section 4 amends s. 828.073, F.S., to grant municipalities with certified animal control officers, the same authority that counties and societies or associations currently have, in order to take custody of an animal found neglected or cruelly treated. The bill provides for allocation of proceeds when an animal is offered for auction. It also conforms this section to changes made in other sections of the bill.

Section 5 amends s. 828.27, F.S., to require that any certified animal control officer must complete four hours of post-certification continuing education training every two years in order to maintain certification. The bill deletes obsolete provisions relating to the proceeds collected for civil penalties imposed for violation of an ordinance relating to animal control or cruelty. This section also provides additional, supplemental, and alternative means of enforcing county or municipal codes or ordinances. It does not prohibit a county or municipality from enforcing its codes or ordinances, including but not limited to, the procedures provided in ch. 162, F.S.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 420 may have an indeterminate negative fiscal impact on individuals who allow their livestock, excluding cattle, to stray or violate animal control and cruelty ordinances. The provisions in the bill will allow county animal control centers and municipalities to collect livestock impoundment fees and enforce ordinances.

C. Government Sector Impact:

The bill will likely have an indeterminate positive fiscal impact on municipalities and counties. Municipalities with certified animal control officers will be able to exercise powers related to animal control and cruelty ordinances currently held by counties. Municipalities will no longer be required to work with counties to enforce animal control and cruelty ordinances, resulting in more efficient and cost effective enforcement procedures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 588.17, 588.18, 588.23, 828.073, and 828.27.

IX. Additional Information:

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

CS/CS by Appropriations on April 9, 2015:
The committee substitute clarifies that new or additional powers are not provided to local humane societies or other non-governmental entities, but instead applies to county and municipal animal control agencies.

CS by Community Affairs on March 17, 2015:

- Authorizes the sheriff or animal control center to offer for adoption or humanely dispose of stray livestock, excluding cattle. Provides notice requirements.
- Authorizes the county animal control center to determine fees for impounding and caring for livestock at large.
- Authorizes certain municipalities to issue orders to provide care or to protect or to humanely dispose of abused or neglected animals.
- Authorizes certain municipalities to take custody of any animal found neglected or cruelly treated or order the owner to provide certain care to the animal.
- Removes the requirement that animals taken from unfit owners be put up for sale prior to being remanded to the custody of certain organizations.
- Provides that proceeds of a sale of an animal go to cover the care and provision costs of certain entities (after covering the cost of the sale).
- Provides training requirements for certified animal control officers.

- Provides that the powers granted by s. 828.27, F.S., are supplemental to county and municipal codes and the section does not prohibit local governments from enforcing such codes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 80 - 211

and insert:

Section 4. Section 828.073, Florida Statutes, is amended to read:

828.073 Animals found in distress~~; when agent may take charge; hearing; disposition; sale~~.—

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal may ~~can~~ be:

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(a) Removed from its present custody, or

(b) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, any animal control officer certified pursuant to s. 828.27, or any agent of any ~~the~~ county or of any society or association for the prevention of cruelty to animals appointed under s. 828.03,

and protected ~~given protection~~ and disposed of appropriately and humanely ~~an appropriate and humane disposition made~~.

(2) Any law enforcement officer, any animal control officer certified pursuant to s. 828.27, or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under ~~the provisions of~~ s. 828.03 may:

(a) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(b) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location,

and shall file a petition seeking relief under this section in the county court of the county in which the animal is found within 10 days after the animal is seized or an order to provide care is issued. The court shall schedule and commence a hearing on the petition within 30 days after the petition is filed to determine whether the owner, if known, is able to adequately provide ~~adequately~~ for the animal and is fit to have custody of the animal. The hearing shall be concluded and the court order

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entered thereon within 60 days after the date the hearing is commenced. The timeframes set forth in this subsection are not jurisdictional. However, if a failure to meet such timeframes is attributable to the officer or agent, the owner is not required to pay the officer or agent for care of the animal during any period of delay caused by the officer or agent. A fee may not be charged for filing the petition. This subsection does not require court action for ~~the~~ taking ~~into~~ custody and properly disposing ~~making proper disposition~~ of stray or abandoned animals as lawfully performed by animal control agents.

(3) The law enforcement officer, the animal control officer certified pursuant to s. 828.27, or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody ~~charge~~ of an ~~any~~ animal pursuant to ~~the provisions of~~ this section shall have written notice served, at least 3 days before the hearing scheduled under subsection (2), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in accordance ~~conformance~~ with ~~the provisions of~~ chapter 48 relating to service of process. The sheriff of the county may ~~shall~~ not charge a fee for service of such notice.

(4)(a) The law enforcement officer, the animal control officer certified pursuant to s. 828.27, or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody ~~charge~~ of an animal pursuant to ~~as provided for in~~ this section shall provide for the animal until either:

1. The owner is adjudged by the court to be able to adequately provide ~~adequately~~ for, and have custody of, the

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animal, in which case the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody; or

2. The animal is turned over to the officer or agent pursuant to ~~as provided in~~ paragraph (c) and humanely disposed of ~~a humane disposition of the animal is made~~.

(b) If the court determines that the owner is able to provide adequately for, and have custody of, the animal, the order shall provide that the animal in the possession of the officer or agent be claimed and removed by the owner within 7 days after the date of the order.

(c) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

1. The court may:

a. Order that the current owner have no further custody of the animal and that the animal be sold by the sheriff at public auction or~~, that the current owner have no further custody of the animal, and that any animal not bid upon be~~ remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to s. 828.27, or any agency or person the judge deems appropriate~~,~~ to be disposed of as the agency or person sees fit; or

b. Order that the animal be destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to s. 828.27, or any agency or person the judge deems appropriate~~,~~ to be disposed of as the agency or person sees fit.

2. The court, upon proof of costs incurred by the officer or agent, may require that the owner pay for the care of the animal while in the custody of the officer or agent. A separate hearing may be held.

3. The court may order that other animals that are in the custody of the owner and that were not seized by the officer or agent be turned over to the officer or agent~~,~~ if the court determines that the owner is unable or unfit to adequately provide for the animals. The court may enjoin the owner's further possession or custody of other animals.

(5) In determining the person's fitness to have custody of an animal ~~under the provisions of this act~~, the court may consider, among other matters:

(a) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized and as to the conditions under which the animal was kept.

(b) Testimony and evidence as to the veterinary care provided to the animal.

(c) Testimony and evidence as to the type and amount of care provided to the animal.

(d) Expert testimony as to the community standards for proper and reasonable care of the same type of animal.

(e) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(f) The owner's past record of judgments pursuant to ~~under the provisions of~~ this chapter.

(g) Convictions pursuant to applicable ~~under the~~ statutes prohibiting cruelty to animals.


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(h) ~~Any~~ Other evidence the court considers to be material or relevant.

(6) If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and adequately provide ~~adequately~~ for the animal.

(7) In any case in which an animal is offered for auction under ~~the provisions of~~ this section, the proceeds shall be:

(a) Applied, first, to the cost of the sale.

(b) Applied, secondly, to the care of and provision for the animal by the law enforcement officer, the animal control officer certified pursuant to s. 828.27, or the agent of any county or of any society or association for the prevention of cruelty to animals taking custody ~~charge~~.

(c) Applied, thirdly, to the payment of the owner for the sale of the animal.

(d) Paid over to the court if the owner is not known.

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

And the title is amended as follows:

Delete lines 10 - 18

and insert:

act; amending s. 828.073, F.S.; conforming provisions; authorizing certain municipal animal control officers to take custody of an animal found neglected or cruelly treated or to order the owner of such an animal to provide certain care at the owner’s expense; authorizing county courts to remand animals to the

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custody of certain municipalities; authorizing the allocation of auction proceeds to certain animal control officers; amending s. 828.27, F.S.; deleting

By the Committee on Community Affairs; and Senator Grimsley

578-02389-15 2015420c1

A bill to be entitled

An act relating to animal control; amending s. 588.17, F.S.; providing a procedure for adopting or humanely disposing of impounded stray livestock, except cattle, as an alternative to sale or auction; amending s. 588.18, F.S.; requiring a county animal control center to establish fees and be responsible for damages caused while impounding livestock; amending s. 588.23, F.S.; conforming provisions to changes made by the act; amending s. 828.073, F.S.; authorizing certain municipalities to take custody of an animal found neglected or cruelly treated or to order the owner of such an animal to provide certain care at the owner's expense; authorizing county courts to remand animals to the custody of certain municipalities; authorizing the allocation of auction proceeds to certain municipalities; conforming provisions to changes made by the act; amending s. 828.27, F.S.; deleting obsolete provisions; clarifying that certain provisions relating to local animal control are not the exclusive means of enforcing animal control laws; providing an effective date.

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

Section 1. Subsection (4) is added to section 588.17, Florida Statutes, to read:

588.17 Disposition of impounded livestock.—

(4) Notwithstanding the requirements of subsections (1)-

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

578-02389-15 2015420c1

(3), the sheriff or the county animal control center may offer for adoption or humanely dispose of stray livestock, excluding cattle. If the livestock is to be offered for adoption or humanely disposed of, the sheriff or the county animal control center shall:

(a) Provide written notice to the owner, if known, advising the owner of the location where the livestock is impounded and of the amount due by reason of the impounding, and that unless the livestock is redeemed within a timeframe to be established by the sheriff or the county animal control center, which shall be a period of at least 3 business days, the livestock will be offered for adoption or humanely disposed of; or

(b) If the owner is unknown or cannot be located, obtain service upon the owner by publishing a notice on the sheriff's or the county animal control center's website. If the livestock is not redeemed within a timeframe to be established by the authorized agency, which shall be a period of at least 3 business days, the livestock will be offered for adoption or humanely disposed of.

Section 2. Section 588.18, Florida Statutes, is amended to read:

588.18 Livestock at large; fees.—The fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals shall be determined by the sheriff or the county animal control center of each county. Damages done by the sheriff or the county animal control center~~, sheriff's designees, or any other law enforcement officer~~ in pursuit~~,~~ or in the capture, handling, or care of the livestock are the sole responsibility of the sheriff or the county animal

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

control center ~~other law enforcement agency~~.

Section 3. Section 588.23, Florida Statutes, is amended to read:

588.23 Right of owner.—The owner of any impounded livestock has ~~shall have~~ the right at any time before the disposition ~~sale~~ thereof to redeem the livestock ~~same~~ by paying to the sheriff or the county animal control center all impounding expenses, including fees, keeping charges, advertising, or other costs incurred therewith which sum shall be deposited by the sheriff or the county animal control center with the clerk of the circuit court who shall pay all fees and costs as allowed in s. 588.18. If ~~In the event~~ there is a dispute as to the amount of such costs and expenses, the owner may give bond with sufficient sureties to be approved by the sheriff or the county animal control center, in an amount to be determined by the sheriff or the county animal control center, but not exceeding the fair cash value of such livestock, conditioned to pay such costs and damages; thereafter, within 10 days, the owner shall institute suit in equity to have the damage adjudicated by a court of equity or referred to a jury if requested by either party to such suit.

Section 4. Paragraph (b) of subsection (1), subsections (2) and (3), paragraphs (a) and (c) of subsection (4), and subsections (5) and (7) of section 828.073, Florida Statutes, are amended to read:

828.073 Animals found in distress; when agent may take charge; hearing; disposition; sale.—

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal can be:

(b) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, ~~or any agent of~~ the county, a municipality with animal control officers certified pursuant to s. 828.27, or a ~~of any~~ society or association for the prevention of cruelty to animals appointed under s. 828.03,

and given protection and an appropriate and humane disposition made.

(2) A ~~Any~~ law enforcement officer, a ~~or any agent of any~~ county, a municipality with animal control officers certified pursuant to s. 828.27, or ~~of~~ any society or association for the prevention of cruelty to animals appointed under the provisions of s. 828.03 may:

(a) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(b) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location,

and shall file a petition seeking relief under this section in the county court of the county in which the animal is found within 10 days after the animal is seized or an order to provide care is issued. The court shall schedule and commence a hearing on the petition within 30 days after the petition is filed to determine whether the owner, if known, is able to provide adequately for the animal and is fit to have custody of the

animal. The hearing shall be concluded and the court order entered thereon within 60 days after the date the hearing is commenced. The timeframes set forth in this subsection are not jurisdictional. However, if a failure to meet such timeframes is attributable to the officer or agent, the owner is not required to pay the officer or agent for care of the animal during any period of delay caused by the officer or agent. A fee may not be charged for filing the petition. This subsection does not require court action for the taking into custody and making proper disposition of stray or abandoned animals as lawfully performed by animal control agents.

(3) Any ~~The officer or agent of any~~ county, any municipality with animal control officers certified pursuant to s. 828.27, or ~~of~~ any society or association for the prevention of cruelty to animals taking charge of any animal pursuant to the provisions of this section shall have written notice served, at least 3 days before the hearing scheduled under subsection (2), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in conformance with the provisions of chapter 48 relating to service of process. The sheriff of the county may ~~shall~~ not charge a fee for service of such notice.

(4)(a) Any ~~The officer or agent of any~~ county, any municipality with animal control officers certified pursuant to s. 828.27, or ~~of~~ any society or association for the prevention of cruelty to animals taking charge of an animal as provided for in this section shall provide for the animal until either:

1. The owner is adjudged by the court to be able to provide adequately for, and have custody of, the animal, in which case

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

the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody; or

2. The animal is turned over to the officer or agent as provided in paragraph (c) and a humane disposition of the animal is made.

(c) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

1. The court may:

a. Order that the current owner have no further custody of the animal and that the animal be sold by the sheriff at public auction or~~, that the current owner have no further custody of the animal, and that any animal not bid upon be~~ remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to s. 828.27, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit; or

b. Order that the animal be destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, the municipality with animal control officers certified pursuant to s. 828.27, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit.

2. The court, upon proof of costs incurred by the officer or agent, may require that the owner pay for the care of the animal while in the custody of the officer or agent. A separate hearing may be held.

3. The court may order that other animals that are in the

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

custody of the owner and that were not seized by the officer or agent be turned over to the officer or agent, if the court determines that the owner is unable or unfit to adequately provide for the animals. The court may enjoin the owner's further possession or custody of other animals.

(5) In determining the person's fitness to have custody of an animal ~~under the provisions of this act~~, the court may consider, among other matters:

(a) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized and as to the conditions under which the animal was kept.

(b) Testimony and evidence as to the veterinary care provided to the animal.

(c) Testimony and evidence as to the type and amount of care provided to the animal.

(d) Expert testimony as to the community standards for proper and reasonable care of the same type of animal.

(e) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(f) The owner's past record of judgments pursuant to ~~under the provisions of~~ this chapter.

(g) Convictions pursuant to ~~under~~ the statutes prohibiting cruelty to animals.

(h) Other ~~Any other~~ evidence the court considers to be material or relevant.

(7) In any case in which an animal is offered for auction under ~~the provisions of~~ this section, the proceeds shall be:

(a) Applied, first, to the cost of the sale.

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

(b) Applied, secondly, to the care of and provision for the animal by ~~the officer or agent of~~ any county, any municipality with animal control officers certified pursuant to s. 828.27, or ~~of~~ any society or association for the prevention of cruelty to animals taking charge.

(c) Applied, thirdly, to the payment of the owner for the sale of the animal.

(d) Paid over to the court if the owner is not known.

Section 5. Subsection (4) of section 828.27, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

828.27 Local animal control or cruelty ordinances; penalty.—

(4)(a)1. County-employed animal control officers must ~~shall~~, and municipally employed animal control officers may, successfully complete a 40-hour minimum standards training course. Such course must ~~shall~~ include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations. The course curriculum must be approved by the Florida Animal Control Association. An animal control officer who successfully completes such course shall be issued a certificate indicating that he or she has received a passing grade.

2. Any animal control officer who is authorized before ~~prior to~~ January 1, 1990, by a county or municipality to issue citations is not required to complete the minimum standards training course.

3. In order to maintain valid certification, every 2 years each certified ~~county-employed~~ animal control officer must ~~shall~~

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complete 4 hours of postcertification continuing education training. Such training may include, but is not limited to, training for: animal cruelty investigations, search and seizure, animal handling, courtroom demeanor, and civil citations.

(b)~~1.~~ The governing body of a county or municipality may impose and collect a surcharge of up to $5 upon each civil penalty imposed for violation of an ordinance relating to animal control or cruelty. The proceeds from such surcharges shall be used to pay the costs of training for animal control officers.

~~2. In addition to the uses set forth in subparagraph 1., a county, as defined in s. 125.011, may use the proceeds specified in that subparagraph and any carryover or fund balance from such proceeds for animal shelter operating expenses. This subparagraph expires July 1, 2014.~~

(8) This section is an additional, supplemental, and alternative means of enforcing county or municipal codes or ordinances. This section does not prohibit a county or municipality from enforcing its codes or ordinances by any other means, including, but not limited to, the procedures provided in chapter 162.

Section 6. This act shall take effect July 1, 2015.

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

The Florida Senate

Committee Agenda Request

SENATE APPROPRIATIONS
RECEIVED
15 APR -1 PM 6:38
CHAIRMAN
STAFF DIR. STAFF

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #340**, relating to Crisis Stabilization Services, **Senate Bill #420**, relating to Animal Control, and **Senate Bill #682**, relating to Transitional Living Facilities be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

420
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

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Street

Phone 850-681-6788

Tallahassee FL 32301
City *State* *Zip*

Email dferguson@nutlegal-ecenia.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Animal Control Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 534
INTRODUCER:	Criminal Justice Committee and Senators Latvala and Sobel
SUBJECT:	Human Trafficking
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Favorable**
2.	Sumner	Cannon	CJ	**Fav/CS**
3.	Sanders	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 534 seeks to heighten public awareness regarding human trafficking in the State of Florida. The bill:

- Requires the Attorney General to develop specifications for the form and content of human trafficking public awareness signs;
- Directs the Florida Department of Transportation (department) and certain employers to display human trafficking public awareness signs at certain locations;
- Provides civil penalties for employer violations;
- Deems the Attorney General responsible for enforcement; and
- Authorizes the Attorney General to adopt implementing rules.

The bill has an insignificant fiscal impact to the department as the department currently provides human trafficking public awareness signs, in cooperation with the Attorney General's Office at rest areas. The Office of the Attorney General will incur expenses related to the development of the required signs.

This bill provides an effective date of January 1, 2016.

II. Present Situation:

Florida law defines "human trafficking" to mean transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of

that person.[1] The Legislature deems human trafficking to be a form of modern-day slavery; finds that victims are young children, teenagers, and adults; and recognizes that victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[2]

While some victims are kept under lock and key, the Legislature also acknowledges less obvious but more frequently used practices to instill fear in victims and keep them enslaved, such as isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money ostensibly for safekeeping.[3]

At the national level, a number of resources are available to fight human trafficking and to help victims. For example, the United States Department of Health and Human Services' National Human Trafficking Resource Center is a national, toll-free hotline with specialists available to answer calls from anywhere in the country, 24 hours a day, related to potential trafficking victims, suspicious behaviors, or locations where trafficking is suspected to occur.[4] Tips may also be submitted online. Brochures and other victim resources are available by phone and online.[5]

Most recently, at the state level, the Florida Legislature continues its efforts against human trafficking. The 2012 Legislature enacted HB 7049 to:

- Combine Florida's three existing human trafficking statutes into one statute making it more friendly for law enforcement;
- Increase penalties for the crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provide that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provide that any property used for human trafficking is subject to forfeiture;
- Require massage establishments/employees to present valid photo identification upon request; and
- Give jurisdiction for human trafficking to the Statewide Prosecutor and the Statewide Grand Jury.[6]

Other recent Legislative efforts include, but are not limited to, authorizing the Department of Children and Families to provide training to local law enforcement officials who are likely to encounter sexually exploited children, authorizing circuit courts to work cooperatively to provide

[1] See s. 787.06(2)(d), F.S.
[2] See s. 787.061(1)(a), F.S.
[3] See s. 787.06(1)(c), F.S.
[4] According to the Office of the Attorney General, Florida ranks third in the number of calls received by the National Human Trafficking Resource Center: http://myfloridalegal.com/__85256CC5006DFCC3.nsf/0/AF860EB7606CF92D85257A7D00458CD7?Open&Highlight=0,human,trafficking. Last visited March 17, 2015.
[5] See the Federal Bureau of Investigation website: http://www.fbi.gov/about-us/investigate/civilrights/human_trafficking and the National Human Trafficking Resource Center website: http://www.traffickingresourcecenter.org/type-trafficking/human-trafficking. Last visited March 17, 2015.
[6] See Office of the Attorney General website: http://myfloridalegal.com/pages.nsf/Main/EC88B2B1B7E905E285257AC20074F49F. Last visited March 17, 2015.

regional training, and requiring various local officials and entities to participate in task forces involved in coordinating responses to address human trafficking.[7]

The Office of the Attorney General has also undertaken a number of efforts in pursuit of a policy of zero-tolerance for human trafficking in the State of Florida. Such efforts include, but are not limited to:

- Equipping emergency medicine personnel with key information about human trafficking;
- Partnering with Florida's business community and providing a toolkit of educational material intended to help businesses create and implement their own zero-tolerance plans; and
- Joining with the Florida Department of Law Enforcement to develop online training that equips law enforcement officers with information to help them recognize and respond to human trafficking.[8]

In addition, the Attorney General has partnered with the department to spread the anti-human trafficking message along Florida's major roadways by displaying posters in rest areas across Florida and providing a public service announcement to be displayed at 39 of Florida's rest areas that have TV displays.[9]

III. Effect of Proposed Changes:

The bill creates s. 787.08, F.S., to require the Attorney General, in consultation with anti-trafficking organizations and human trafficking survivors, to develop specifications for the form and content of required human trafficking public notice signs. The signs must:

- Be at least 8.5 by 11 inches in size;
- Be printed in at least a 16-point type; and
- State substantially in English, Spanish, or any other language required by the Attorney General the following:

> If you or someone you know is being forced to engage in an activity and cannot leave – whether it is commercial sex, housework, farm work, factory work, retail work, restaurant work, or any other activity – call the National Human Trafficking Resource Center at [insert number] or text INFO or HELP to [insert number] to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.

The Attorney General is deemed responsible for enforcement of s. 787.08, F.S., and is required to adopt implementing rules.

The department is directed to display such a sign in every rest area and welcome center in the state. Employers at each of the following establishments are required to display such signs near

[7] See ch. 2014-161, Laws of Florida.
[8] See Office of the Attorney General website: http://myfloridalegal.com/__85256CC5006DFCC3.nsf/0/AF860EB7606CF92D85257A7D00458CD7?Open&Highlight=0,human,trafficking. Last visited March 17, 2015.
[9] *Id.*

the public entrance of the establishment or in another conspicuous location clearly visible to both the public and employees of the establishment:

- A strip club or other adult entertainment establishment.
- An establishment found to be a nuisance for prostitution.
- A primary airport.
- A passenger or light rail station.
- A bus station.
- A truck stop, defined to mean a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.
- An emergency room within a general acute care hospital.
- An urgent care center.
- The premises of a farm labor contractor where farm laborers are regularly present.
- A privately operated job recruitment center.
- A business or establishment that offers massage or bodywork services for compensation excluding establishments owned by health care professions regulated pursuant to ch. 456, F.S.
- A public K-12 school.
- A public library.
- A health department and a health clinic.

The Attorney General is required to impose a civil penalty of $500 for a first offense, and $1,000 for a second or subsequent offense, on an employer who knowingly fails to comply with the sign requirements. The civil penalty is the exclusive remedy for noncompliance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 534, certain establishments (*see* Section III above) will incur minimal expenses in posting the required signage. A civil penalty of $500 for the first offense and

$1,000 for each offense thereafter shall be imposed upon an employer who knowingly fails to comply with the provisions of the bill.

C. Government Sector Impact:

The Office of the Attorney General will incur expenses in developing the required signs and adopting rules, which are expected to be absorbed within existing resources. The department advises 84 facilities (rest areas, welcome centers, service plazas and comfort stations) would require signage and deems the fiscal impact to be "insignificant."[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 787.08 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 Criminal Justice on March 23, 2015:
The Committee Substitute adds a health department and a health clinic to the list of establishments that must display human trafficking public awareness signs. It clarifies that establishments owned by health care professions regulated pursuant to ch. 456, F.S., are not included in the list of establishments that must display a human trafficking public awareness sign.

B. Amendments:

None.

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

[10] See the 2015 Department of Transportation Legislative Bill Analysis for SB 534. On file in the Senate Transportation Committee.

By the Committee on Criminal Justice; and Senator Latvala

591-02747-15 2015534c1

A bill to be entitled

An act relating to human trafficking; creating s. 787.08, F.S.; requiring the Department of Transportation and certain employers to display human trafficking public awareness signs at specified locations; providing civil penalties for violations; requiring the Attorney General, in consultation with certain others, to develop specifications for the form and content of such signs; providing sign requirements; providing that the Attorney General is responsible for enforcement; requiring rulemaking; providing an effective date.

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

Section 1. Section 787.08, Florida Statutes, is created to read:

787.08 Human trafficking public awareness signs.—

(1) The Department of Transportation shall display a public awareness sign developed under subsection (3) in every rest area and welcome center in the state that is open to the public.

(2)(a) The employer at each of the following establishments shall display a public awareness sign developed under subsection (3) near the public entrance of the establishment or in another conspicuous location that is clearly visible to both the public and employees of the establishment:

1. A strip club or other adult entertainment establishment.

2. An establishment found to be a nuisance for prostitution under s. 893.138.

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591-02747-15 2015534c1

3. A primary airport.

4. A passenger or light rail station.

5. A bus station.

6. A truck stop. For purposes of this subparagraph, the term "truck stop" means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.

7. An emergency room within a general acute care hospital.

8. An urgent care center.

9. The premises of a farm labor contractor where farm laborers are regularly present.

10. A privately operated job recruitment center.

11. A business or establishment that offers massage or bodywork services for compensation that is not owned by a health care profession regulated pursuant to chapter 456 and defined in s. 456.001.

12. A public K-12 school as described in s. 1000.04.

13. A public library.

14. A health department and a health clinic.

(b) The Attorney General shall impose a civil penalty of $500 for a first offense and $1,000 for a second or subsequent offense for an employer who knowingly fails to comply with paragraph (a). The civil penalty is the exclusive remedy for failure to comply with this section.

(3)(a) The Attorney General shall, in consultation with anti-trafficking organizations and human trafficking survivors, develop specifications for the form and content of signs required by this section.

(b) The required public notice must be at least 8.5 inches

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by 11 inches in size, must be printed in at least a 16-point type, and must state substantially the following in English, Spanish, or any other language required by the Attorney General: "If you or someone you know is being forced to engage in an activity and cannot leave—whether it is commercial sex, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the National Human Trafficking Resource Center at [insert number] or text INFO or HELP to [insert number] to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law."

(4) The Attorney General is responsible for enforcement of this section and shall adopt rules to implement this section.

Section 2. This act shall take effect January 1, 2016.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-15
Meeting Date

534
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms.

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 222-3969

Email barbaradevane1@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL NOW

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

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4-9-15
Meeting Date

SB534
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Legislative Liaison

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Street

Tallahassee FL 32303
City *State* *Zip*

Phone (850) 322-7599

Email amydatz@pdn.com

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

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

Representing National Council of Jewish Women

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)

4/9/15
Meeting Date

534
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Human Trafficking

Name Justin Day

Job Title Director

Address 701 S. Howard Ave, Suite 106-326 Phone 850 222 8900
Street

Tampa FL 33606 Email jd@cardenaspartners.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing More Too Life

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)

4/9/15
Meeting Date

SB 534
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Human Trafficking

Name Rebecca Dela Rosa

Job Title

Address ~~P.O. Bo~~ 3161 Baringer Hill Dr.
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Tallahassee, FL 32311
City *State* *Zip*

Phone 850.284.7235

Email delarosar12@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

9 Apr 15
Meeting Date

SB 534
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

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Street

Phone 577.3032

Tall
City

FL
State

32301
Zip

Email barney@smartjustice alliance.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 606 (161922)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Gaetz and others
SUBJECT:	Dental Care
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 606 authorizes the creation of joint state and local dental care access accounts to promote local economic development and to encourage Florida-licensed dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population, subject to the availability of funds.

The Department of Health estimates first-year implementation expenditures of $130,341 from the General Revenue Fund and recurring maintenance and support costs of $152,050 from the General Revenue Fund.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Health Professional Shortage Areas

Health Professional Shortage Areas (HPSAs) are designated by the Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and population groups within the United States that are experiencing a shortage of health professionals.

There are three categories of HPSA designation: (1) primary medical; (2) dental; and (3) mental health. For each discipline category, there are three types of HPSA designations based on the area or population group that is experiencing the shortage: (1) geographic area; (2) population group; and (3) facility.

A geographic HPSA indicates that the entire area may experience barriers in accessing care, while a population HPSA indicates that a particular subpopulation of an area (e.g., homeless or low-income) may be underserved. Finally, a facility HPSA is a unique facility that primarily cares for an underserved population.

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000 to 1 (or 4,000 to 1 in high need communities).

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the U.S. Department of Health and Human Services. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts.[1]

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.

The third process, Exceptional MUP Designations, includes those population groups which do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[2]

The Dental Workforce

Nationally, the pool of dentists to serve the growing population of Americans is shrinking. The American Dental Association has found that 6,000 dentists retire each year in the U.S., while there are only 4,000 dental school graduates each year to replace them. The projected shortage of dentists is even greater in rural America. Of the approximately 150,000 general dentists in

[1] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Shortage Demonstration: Health Professional Areas & Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/ (Last visited Mar. 2, 2015).
[2] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/mua/index.html (last visited Mar. 2, 2015).

practice in the U.S., only 14 percent practice in rural areas, 7.7 percent practice in large rural areas, 3.7 percent practice in small rural areas, and 2.2 percent practice in isolated rural areas. In 2003, there were 2,235 federally designated dental health professional shortage areas (HPSAs).[3] Today, the number of dental HPSAs has increased to over 4,900.

While the dental workforce is projected to grow by six percent between 2012 and 2025, it is not expected to meet the overall national demand. States expected to have the greatest shortfall are California, which has the largest number (1,234 fewer dentists than needed), followed by Florida, which has 1,152 fewer dentists than needed.[4]

Similar to the national trend, most dentists in Florida are concentrated in the more populous areas of the state, while rural areas, especially the central Panhandle counties and interior counties of south Florida, have a noticeable dearth of dentists.[5] This is true for both general dentistry as well as for dental specialists. Over 20 percent of Florida licensed dentists that responded to the 2011-2012 *Florida Workforce Survey of Dentists* (survey) currently do not practice in Florida.[6]

Most dentists – 77.8 percent – practice in general dentistry.[7] In many rural communities, the county health department may be the primary provider of health care services, including dental care. Florida currently has 220 designated dental HPSAs, which have only enough dentists to serve 17 percent of the population living within them. For 2012, HRSA estimated that 853 additional dentists were required to meet the total need. This puts Florida among the states with the highest proportion of their populations that are deemed underserved. By 2025, Florida's need grows to 1,152 dentists.[8]

The American Dental Association has also studied this issue and found that while there may be a sufficient number of dentists overall, there may be an inadequate number among certain populations or in certain geographic areas.[9] Children are acutely affected by the shortage of dentists to serve low income patients. In 2012, 26 percent of Medicaid-enrolled children in Florida received one or more dental care services, according data from the Agency for Health

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[3] National Rural Health Association, *Issue Paper: Recruitment and Retention of a Quality Health Workforce in Rural Areas*, (November 2006) (on file with the Senate Committee on Health Policy).

[4] U.S. Department of Health and Human Services, Health Resources and Services Administration, *National and State Level Projections of Dentists and Dental Hygienists in the U.S., 2012-2015*, pp.-3-4 (February 2015) http://bhpr.hrsa.gov/healthworkforce/supplydemand/dentistry/nationalstatelevelprojectionsdentists.pdf (last visited Feb. 27, 2015).

[5] Florida Dept. of Health, *Report on the 2011-2012 Workforce Survey of Dentists*, p. 6 (April 2014) http://www.floridahealth.gov/programs-and-services/community-health/dental-health/workforce-reports/florida-workforce-survey-of-dentists-2011-2012.pdf (last visited Feb. 27, 2015). In 2009, the department developed this workforce survey for dentists. The survey was administered on a voluntary basis in conjunction with biennial renewal of dental licenses and 87 percent of dentists with an active Florida license responded to the survey; a drop of 2 percent points from the 2009-2010 survey.

[6] Id. at 46.

[7] Id.

[8] *Supra* note 4, at 9.

[9] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Feb. 27, 2015).

Care Administration (AHCA).[10] The survey noted a noticeable participation difference between private-practice dentists and those who practice in a safety-net setting. Of those in a private-office setting, only 13.7 percent report seeing Medicaid enrollees while over 60 percent of safety-net providers report Medicaid participation.[11]

In 2011, the Legislature passed HB 7107[12] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of delivery of Medicaid primary and acute care, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide, as an enhanced benefit, dental services for adults.

The Cost of Dental Education

Among U.S. dental schools, the cost of a four-year degree has risen dramatically over the last 10 years – by 93 percent for in-state residents (from about $89,000 to $171,000) and by 82 percent for out-of-state residents (from $128,000 to $234,000). Dental school debt has increased proportionately. The average debt for dental school graduates in 2011 was $245,497.[13] Some studies indicate that increasing education costs and the prospect of indebtedness after dental school graduation could further erode access to care for vulnerable, underserved populations.[14] At least three studies, including a 2011 Florida Senate Report,[15] have recommended consideration of loan forgiveness programs as one strategy for addressing dental workforce shortage concerns.[16]

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[10] *Supra* note 5, at 8.
[11] *Supra* note 5, at 35.
[12] *See* ch. 2011-134, Laws of Fla.
[13] *Supra* note 4, at 6.
[14] American Dental Education Association, *A Report of the ADEA Presidential Task Force on the Cost of Higher Education and Student Borrowing*, pp. 17-18 (March 2013) http://www.adea.org/uploadedFiles/ADEA/Content_Conversion_Final/publications/Documents/ADEACostandBorrowingReportMarch2013.pdf (last viewed Feb. 27, 2015). *See* also U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *Financing Dental Education: Public Policy Interests, Issues and Strategic Considerations*, p. 39 (2005) http://bhpr.hrsa.gov/healthworkforce1/reports/financedentaledu.pdf (last visited Feb 27. 2015).
[15] Comm. on Health Regulation, The Florida Senate, *Review Eligibility of Dentist Licensure in Florida and Other Jurisdictions*, p.15 (Interim Report 2012-127) (Sept. 2011) http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-127hr.pdf (last visited Mar. 2, 2015). The report concluded, in part: "Florida may become more competitive in its recruitment of dentists in rural areas and may enhance Florida's dental care for underserved populations if it offers a loan forgiveness program. The program could require dentists seeking loan assistance to serve in a rural area (the Panhandle or central, south Florida) and require dentists to serve a certain percentage of Medicaid recipients or participate in the provider network of managed care entities participating in the Medicaid program for a particular period of time. Considering the current lack of state resources, it may be beneficial to limit the number of dentists that may apply to the loan forgiveness program and target resources to areas with the most need for general dentists or specialists." At the time, Florida was one of only eight states that did not have a state loan forgiveness program. According to the American Dental Association, it is one of only 11 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Montana, Texas, and Utah as of July 2014. http://www.ada.org/~/media/ADA/Education%20and%20Careers/Files/dental-student-loan-repayment-resource.ashx (Last visited Mar. 2, 2015).
[16] American Dental Education Association, *supra* note 14, at 26; *Financing Dental Education*, *supra* note 14, at 40.

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the Department of Health (DOH), to encourage medical professionals to practice in locations that are underserved because of a shortage of qualified professionals.[17] The FHSC was defined[18] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[19] or in a medically underserved area.[20] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[21] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[22] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[23]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[24]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[25] The 2007 Legislature attempted to reinvigorate the

[17] Ch. 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).
[18] Section 381.0302(2)(b)1., F.S. (2011).
[19] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[20] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[21] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[22] Section 381.0302(10), F.S. (2011).
[23] Section 381.0302(11), F.S. (2011).
[24] Section 381.0302(6), F.S. (2011).
[25] Email from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).

program by appropriating $700,000 to fund loan repayment assistance for dentists only.[26] However, the appropriation and a related substantive bill were vetoed by the governor.[27] The Legislature repealed the program in 2012.[28]

National Health Service Corps

The NHSC programs provide scholarships and educational loan repayment to primary care providers[29] who agree to practice in areas that are medically underserved. NHSC loan repayment program (LRP) participants fulfill their service requirement by working at NHSC-approved sites in HPSAs. The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services for free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals. The SFS or discounted fee schedule is based upon the Federal Poverty Guidelines, and patient eligibility is determined by annual income and family size.[30]

The LRP provides funds to participants to repay their outstanding qualifying educational loans. Maximum loan reimbursement under the program is $50,000 for a two-year, full-time practice or up to $15,000 for a two-year, half-time clinical practice, although participants may be eligible to continue loan repayment beyond the initial term.[31,32] Participants who breach their LRP agreement are subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. Loan repayments are exempt from federal income and employment taxes and are not included as wages when determining benefits under the Social Security Act.[33] In 2013, there were 38.5 full-time-equivalent NHSC dentists in Florida.[34]

A second NHSC program, the State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies

[26] Ch. 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.
[27] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[28] Ch. 2012-184, s. 45, Laws of Fla.
[29] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.
[30] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps Site Reference Guide*, (April 14, 2014) http://nhsc.hrsa.gov/downloads/sitereference.pdf (last visited Mar. 2, 2015).
[31] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19 http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb, 27, 2015).
[32] U.S. Department of Health and Human Services, Loan Repayment Program - *Fiscal Year 2015 Application and Program Guidance*, pp. 4-5 (January 2015) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb. 27, 2015).
[33] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps 101* (on file in the Senate Health Policy Committee).
[34] Email from Philip Street, Senior Policy Coordinator, Health Statistics and Performance Management, Florida Dept. of Health (Nov. 19, 2013) (on file with the Senate Committee on Health Policy).

from state-to-state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally-designated HPSA. Like the NHSC loan repayment program awards, assistance provided through an SLRP is not taxable.

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years.

Florida does not currently participate in SLRP.

III. Effect of Proposed Changes:

The bill creates the dental care access accounts initiative at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to encourage dentists to practice in dental health professional shortage areas or medically underserved areas or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally-funded migrant health center, or other publicly-funded or not-for-profit health care program designated by the DOH.

The initiative will be developed by the DOH to benefit dentists licensed to practice in this state who demonstrate, as required by DOH rule:

- Active employment by a public health program in a dental health professional shortage area or a medically underserved area; or
- A commitment to opening a private practice in a dental health professional shortage area or medically underserved area by residing in the area, maintaining a Medicaid provider agreement, enrolling with one or more Medicaid managed care plans, expending capital to open an office to serve at least 1,200 patients, and obtaining community financial support.

The DOH is required to establish dental access accounts for dentists who meet the requirements in the bill and to implement an electronic benefits transfer system. Funds from the account may be used only for specific purposes, such as payment of student loans; investment in property, facilities, or equipment necessary to establish an office and payment of transitional expenses related to relocating or opening a dental practice.

Subject to available appropriations, the DOH is required to distribute funds to the dental access accounts in amounts not to exceed $100,000 and no less than $10,000. A state award may not exceed three times the amount contributed to an account in the same year from a local source. The DOH is authorized to accept funds for deposit from local sources.

If a dentist qualifies for an account on the basis of his or her employment with a public health program, the dentist's salary and associated employer expenditures may count as local match for a state award if the salary and employer expenditures are not state funds. State funds may not be used to calculate amounts contributed from local sources.

Accounts may be terminated if the dentist no longer works for a public health program and does not open a dental practice in a designated area within 30 days of terminating employment, the dentist's practice is no longer located in a dental professional shortage area or a medically underserved area, the provider has been terminated from Medicaid, or the provider has participated in any fraudulent activity. The DOH is directed to close an account five years after the first deposit or upon a dentist's termination from the program.

Any remaining funds after five years or from terminated accounts may be awarded to another account or returned to the donor. A dentist is required to repay any funds withdrawn from the account after the occurrence of an event which requires account closure, if the dentist fails to maintain eligibility for the program through employment in a public health program or establishing a dental practice for a minimum of two years, or uses the funds for unauthorized purposes. The DOH is authorized to recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

The DOH is authorized to adopt rules for application procedures that:

- Limit the number of applicants;
- Incorporate a documentation process for evidence of sufficient capital expenditures in opening a dental practice, such as contracts or leases or other acquisitions of a practice location of at least 30 percent of the value of equipment or supplies necessary to operate a practice; and
- Give priority to those applicants practicing in the areas receiving higher rankings by the Department of Economic Opportunity.

The DOH may also establish by rule a process to verify that funds withdrawn from an account have been used for the purposes authorized.

The Department of Economic Opportunity shall rank the dental professional shortage areas and medically underserved areas based on the extent to which limited access to dental care is impeding economic development.

The DOH must develop a marketing plan for the dental care access account initiative with the University of Florida College of Dentistry, the Nova Southeastern College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 606, Floridians living in those areas identified as medically underserved and have little to no access to dental care could benefit from this initiative as it could bring additional dental professionals to their communities. The initiative also permits the grantees to utilize the funds to transition or relocate to new areas and to build or renovate office space in rural communities, which would generate economic growth for small towns and cities.

The ability to maintain good oral health for adults and children enables workers to also be more productive and for children to participate more actively in school activities.

Additionally, dentists who qualify for loan repayment assistance will benefit from a reduction in their student loan debt.

C. Government Sector Impact:

This bill will create a fiscal impact to the Department of Health (DOH) for the costs related to the implementation and management of the dental care access account initiative. The projected impact is $130,341 from the General Revenue Fund for the 2015-2016 fiscal year with a recurring cost of $152,050 from the General Revenue Fund beginning with Fiscal Year 2016-2017.

The initial cost for the electronic benefit transfer contract/vendor is unknown, but the DOH reports a nominal cost of approximately $0.50 per participant per month as a maintenance fee. The DOH also anticipates a withdrawal fee of at least $1 per transaction

when a dentist makes a withdrawal from his or her account. The number of dentists qualifying for this initiative is unknown.[35]

The DOH also reports the bill will create a workload impact that current staff is unable to meet. Two additional staff members (2 FTEs) would be required to develop the application process and adopt rules. Staff will also be needed to monitor activity, dentist conduct, dentist membership status, and rulings by the Board of Dentistry on recipients.

The following are the estimated expenditures for the DOH:[36]

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
SALARIES		
1 FTE **Health Care Program Analyst @ $40,948 - pay grade 24**	$41,460	$55,280
1 FTE **Senior Management Analyst II @ $46,381 - pay grade 26**	$46,961	$62,614
EXPENSES		
2 FTEs Calculated with standard DOH professional package (limited travel) @ $15,616	$31,232	$23,468
HUMAN RESOURCES SERVICES		
2 FTEs Calculated with standard DOH Central Office package @ $344	$688	$688
Operating Capital Outlay		
Operating Capital Outlay	$0.00	$0.00
Contractual Services		
Estimate for the development, implementation and maintenance of an electronic benefit transfer (EBT) system	$10,000	$10,000
TOTAL ESTIMATED EXPENDITURES	**$130,341**	**$152,050**

The DOH is also directed to develop a marketing plan with Florida-based dental schools. The cost of that marketing plan has not yet been developed by the DOH.

VI. Technical Deficiencies:

None.

[35] Florida Department of Health, *Senate Bill 606 Analysis*, pp.4-5, (Feb. 6, 2015) (on file with the Senate Committee on Health Policy).
[36] Id.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.4019 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 Health and Human Services on March 19, 2015:
The committee substitute clarifies the definition of "public health program" to include federally *qualified* community health centers, instead of federally *funded* community health centers, thereby referencing federally qualified health centers as defined under the federal Public Health Service Act.

CS by Health Policy on March 4, 2015:
The committee substitute:

- Adds medically underserved populations to the focus areas of the dental care access account initiative;
- Authorizes the salary and associated employer expenditures of an employee in a public health program to qualify as local match if no state funds contribute to these costs and specifically prohibits state funds from counting toward local match;
- Provides that local funds are to be returned on a pro rata basis;
- Provides standards for rulemaking regarding the demonstration of sufficient capital to show substantial progress in opening a dental practice;
- Requires rule to verify funds are used for allowable purposes; and
- Requires the Department of Health to develop a marketing plan with the state dental schools.

B. Amendments:

None.

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

351206

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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The Committee on Appropriations (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Between lines 177 and 178

insert:

(13)(a) By January 1 of each year, beginning in 2017, the department shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which must include:

1. The number of patients served by dentists receiving funding under this section.

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2. The number of Medicaid recipients served by dentists receiving funding under this section.

3. The average number of hours worked and patients served in a week by dentists receiving funding under this section.

4. The number of dentists in each dental health professional shortage area or medically underserved area receiving funding under this section.

5. The amount and source of local matching funds received by the department.

6. The amount of state funds awarded to dentists under this section.

7. A complete accounting of the use of funds, by categories identified by the department, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

(b) The department shall adopt rules to require dentists to report information to the department which is necessary for the department to fulfill its reporting requirement under this subsection.

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

And the title is amended as follows:

Delete line 36

and insert:

Association; requiring the Department of Health to annually submit a report with certain information to the Governor and the Legislature; providing rulemaking authority to require the submission of information for such reporting; providing an effective date.

161922

576-02551-15

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to dental care; creating s. 381.4019, F.S.; establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; specifying the purpose of the initiative; defining terms; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; requiring the Department of Health to implement an electronic benefit transfer system; providing for the use of funds deposited in the accounts; authorizing the department to distribute state funds to accounts subject to legislative appropriations; authorizing the department to accept contributions from local sources for deposit in designated accounts; limiting the number of years that an account may remain open; providing for the immediate closure of accounts under certain circumstances; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring a dentist to repay funds in certain circumstances; authorizing the department to pursue disciplinary enforcement actions and to use other legal means to recover funds; requiring the department to establish by rule application procedures and a

161922

576-02551-15

process to verify the use of funds withdrawn from a dental care access account; requiring the department to give priority to applications from dentists practicing in certain areas; requiring the Department of Economic Opportunity to rank shortage areas and medically underserved areas; requiring the Department of Health to develop a marketing plan in cooperation with certain dental colleges and the Florida Dental Association; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental care access accounts.—Subject to the availability of funds, the Legislature establishes a joint local and state dental care access account initiative and authorizes the creation of dental care access accounts to promote economic development by supporting qualified dentists who practice in dental health professional shortage areas or medically underserved areas or who treat a medically underserved population. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents of this state is an important contributing factor in economic development. Better health, including better oral health, enables workers to be more productive, reduces the burden of health care costs, and enables children to improve in cognitive development.

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

(a) "Dental health professional shortage area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(b) "Department" means the Department of Health.

(c) "Medically underserved area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(d) "Public health program" means a county health department, the Children's Medical Services program, a federally qualified community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program as designated by the department.

(2) The department shall develop and implement a dental care access account initiative to benefit dentists licensed to practice in this state who demonstrate, as required by the department by rule:

(a) Active employment by a public health program located in a dental health professional shortage area or a medically underserved area; or

(b) A commitment to opening a private practice in a dental health professional shortage area or a medically underserved area evidenced by residing in the designated area, maintaining an active Medicaid provider agreement, enrolling in one or more Medicaid managed care plans, expending sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients, and obtaining financial support from the local community in which the dentist is practicing or intending to open a practice.

(3) The department shall establish dental care access accounts as individual benefit accounts for each dentist who satisfies the requirements of subsection (2) and is selected by the department for participation. The department shall implement an electronic benefit transfer system that enables each dentist to spend funds from his or her account for the purposes described in subsection (4).

(4) Funds contributed from state and local sources to a dental care access account may be used for one or more of the following purposes:

(a) Repayment of dental school student loans.

(b) Investment in property, facilities, or equipment necessary to establish and operate a dental office consisting of no fewer than two operatories.

(c) Payment of transitional expenses related to the relocation or opening of a dental practice which are specifically approved by the department.

(5) Subject to legislative appropriation, the department shall distribute state funds as an award to each dental care access account. Such awards must be in an amount not more than $100,000 and not less than $10,000, except that a state award may not exceed 3 times the amount contributed to an account in the same year from local sources. If a dentist qualifies for a dental care access account under paragraph (2)(a), the dentist's salary and associated employer expenditures constitute a local match and qualify the account for a state award if the salary and associated expenditures do not come from state funds. State funds may not be included in a determination of the amount contributed to an account from local sources.

(6) The department may accept contributions of funds from local sources for deposit in the account of a dentist designated by the donor.

(7) The department shall close an account no later than 5 years after the first deposit of state or local funds into that account or immediately upon the occurrence of any of the following:

(a) Termination of the dentist's employment with a public health program, unless, within 30 days of such termination, the dentist opens a private practice in a dental health professional shortage area or medically underserved area.

(b) Termination of the dentist's practice in a designated dental health professional shortage area or medically underserved area.

(c) Termination of the dentist's participation in the Florida Medicaid program.

(d) Participation by the dentist in any fraudulent activity.

(8) Any state funds remaining in a closed account may be awarded and transferred to another account concurrent with the distribution of funds under the next legislative appropriation for the initiative. The department shall return to the donor on a pro rata basis unspent funds from local sources which remain in a closed account.

(9) If the department determines that a dentist has withdrawn account funds after the occurrence of an event specified in subsection (7), has used funds for purposes not authorized in subsection (4), or has not remained eligible for a dental care access account for a minimum of 2 years, the dentist

shall repay the funds to his or her account. The department may recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

(10) The department shall establish by rule:

(a) Application procedures for dentists who wish to apply for a dental care access account. An applicant may demonstrate that he or she has expended sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients by documenting contracts for the purchase or lease of a practice location and providing executed obligations for the purchase or other acquisition of at least 30 percent of the value of equipment or supplies necessary to operate a dental practice. The department may limit the number of applicants selected and shall give priority to those applicants practicing in the areas receiving higher rankings pursuant to subsection (11). The department may establish additional criteria for selection which recognize an applicant's active engagement with and commitment to the community providing a local match.

(b) A process to verify that funds withdrawn from a dental care access account have been used solely for the purposes described in subsection (4).

(11) The Department of Economic Opportunity shall rank the dental health professional shortage areas and medically underserved areas of the state based on the extent to which limited access to dental care is impeding the area's economic development, with a higher ranking indicating a greater impediment to development.

(12) The department shall develop a marketing plan for the

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dental care access account initiative in cooperation with the University of Florida College of Dentistry, the Nova Southeastern University College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 606
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Gaetz and others
SUBJECT:	Dental Care
DATE:	April 10, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 606 authorizes the creation of joint state and local dental care access accounts to promote local economic development and to encourage Florida-licensed dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population, subject to the availability of funds.

The Department of Health estimates first-year implementation expenditures of $130,341 from the General Revenue Fund and recurring maintenance and support costs of $152,050 from the General Revenue Fund.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Health Professional Shortage Areas

Health Professional Shortage Areas (HPSAs) are designated by the Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and population groups within the United States that are experiencing a shortage of health professionals.

There are three categories of HPSA designation: (1) primary medical; (2) dental; and (3) mental health. For each discipline category, there are three types of HPSA designations based on the area or population group that is experiencing the shortage: (1) geographic area; (2) population group; and (3) facility.

A geographic HPSA indicates that the entire area may experience barriers in accessing care, while a population HPSA indicates that a particular subpopulation of an area (e.g., homeless or low-income) may be underserved. Finally, a facility HPSA is a unique facility that primarily cares for an underserved population.

The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. The threshold for a dental HPSA is a population-to-provider ratio of at least 5,000 to 1 (or 4,000 to 1 in high need communities).

Medically Underserved Area

Medically Underserved Areas (MUA) are also designated by the U.S. Department of Health and Human Services. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts.[1]

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.

The third process, Exceptional MUP Designations, includes those population groups which do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.[2]

The Dental Workforce

Nationally, the pool of dentists to serve the growing population of Americans is shrinking. The American Dental Association has found that 6,000 dentists retire each year in the U.S., while there are only 4,000 dental school graduates each year to replace them. The projected shortage of dentists is even greater in rural America. Of the approximately 150,000 general dentists in

[1] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Shortage Demonstration: Health Professional Areas & Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/ (Last visited Mar. 2, 2015).
[2] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Medically Underserved Areas/Populations* http://www.hrsa.gov/shortage/mua/index.html (last visited Mar. 2, 2015).

practice in the U.S., only 14 percent practice in rural areas, 7.7 percent practice in large rural areas, 3.7 percent practice in small rural areas, and 2.2 percent practice in isolated rural areas. In 2003, there were 2,235 federally designated dental health professional shortage areas (HPSAs).[3] Today, the number of dental HPSAs has increased to over 4,900.

While the dental workforce is projected to grow by six percent between 2012 and 2025, it is not expected to meet the overall national demand. States expected to have the greatest shortfall are California, which has the largest number (1,234 fewer dentists than needed), followed by Florida, which has 1,152 fewer dentists than needed.[4]

Similar to the national trend, most dentists in Florida are concentrated in the more populous areas of the state, while rural areas, especially the central Panhandle counties and interior counties of south Florida, have a noticeable dearth of dentists.[5] This is true for both general dentistry as well as for dental specialists. Over 20 percent of Florida licensed dentists that responded to the 2011-2012 *Florida Workforce Survey of Dentists* (survey) currently do not practice in Florida.[6]

Most dentists – 77.8 percent – practice in general dentistry.[7] In many rural communities, the county health department may be the primary provider of health care services, including dental care. Florida currently has 220 designated dental HPSAs, which have only enough dentists to serve 17 percent of the population living within them. For 2012, HRSA estimated that 853 additional dentists were required to meet the total need. This puts Florida among the states with the highest proportion of their populations that are deemed underserved. By 2025, Florida's need grows to 1,152 dentists.[8]

The American Dental Association has also studied this issue and found that while there may be a sufficient number of dentists overall, there may be an inadequate number among certain populations or in certain geographic areas.[9] Children are acutely affected by the shortage of dentists to serve low income patients. In 2012, 26 percent of Medicaid-enrolled children in Florida received one or more dental care services, according data from the Agency for Health

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[3] National Rural Health Association, *Issue Paper: Recruitment and Retention of a Quality Health Workforce in Rural Areas*, (November 2006) (on file with the Senate Committee on Health Policy).

[4] U.S. Department of Health and Human Services, Health Resources and Services Administration, *National and State Level Projections of Dentists and Dental Hygienists in the U.S., 2012-2015*, pp.-3-4 (February 2015) http://bhpr.hrsa.gov/healthworkforce/supplydemand/dentistry/nationalstatelevelprojectionsdentists.pdf (last visited Feb. 27, 2015).

[5] Florida Dept. of Health, *Report on the 2011-2012 Workforce Survey of Dentists*, p. 6 (April 2014) http://www.floridahealth.gov/programs-and-services/community-health/dental-health/workforce-reports/florida-workforce-survey-of-dentists-2011-2012.pdf (last visited Feb. 27, 2015). In 2009, the department developed this workforce survey for dentists. The survey was administered on a voluntary basis in conjunction with biennial renewal of dental licenses and 87 percent of dentists with an active Florida license responded to the survey; a drop of 2 percent points from the 2009-2010 survey.

[6] Id. at 46.

[7] Id.

[8] *Supra* note 4, at 9.

[9] Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx (last visited Feb. 27, 2015).

Care Administration (AHCA).[10] The survey noted a noticeable participation difference between private-practice dentists and those who practice in a safety-net setting. Of those in a private-office setting, only 13.7 percent report seeing Medicaid enrollees while over 60 percent of safety-net providers report Medicaid participation.[11]

In 2011, the Legislature passed HB 7107[12] creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of delivery of Medicaid primary and acute care, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide, as an enhanced benefit, dental services for adults.

The Cost of Dental Education

Among U.S. dental schools, the cost of a four-year degree has risen dramatically over the last 10 years – by 93 percent for in-state residents (from about $89,000 to $171,000) and by 82 percent for out-of-state residents (from $128,000 to $234,000). Dental school debt has increased proportionately. The average debt for dental school graduates in 2011 was $245,497.[13] Some studies indicate that increasing education costs and the prospect of indebtedness after dental school graduation could further erode access to care for vulnerable, underserved populations.[14] At least three studies, including a 2011 Florida Senate Report,[15] have recommended consideration of loan forgiveness programs as one strategy for addressing dental workforce shortage concerns.[16]

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[10] *Supra* note 5, at 8.
[11] *Supra* note 5, at 35.
[12] *See* ch. 2011-134, Laws of Fla.
[13] *Supra* note 4, at 6.
[14] American Dental Education Association, *A Report of the ADEA Presidential Task Force on the Cost of Higher Education and Student Borrowing*, pp. 17-18 (March 2013) http://www.adea.org/uploadedFiles/ADEA/Content_Conversion_Final/publications/Documents/ADEACostandBorrowingReportMarch2013.pdf (last viewed Feb. 27, 2015). *See* also U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *Financing Dental Education: Public Policy Interests, Issues and Strategic Considerations*, p. 39 (2005) http://bhpr.hrsa.gov/healthworkforce1/reports/financedentaledu.pdf (last visited Feb 27. 2015).
[15] Comm. on Health Regulation, The Florida Senate, *Review Eligibility of Dentist Licensure in Florida and Other Jurisdictions*, p.15 (Interim Report 2012-127) (Sept. 2011) http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-127hr.pdf (last visited Mar. 2, 2015). The report concluded, in part: "Florida may become more competitive in its recruitment of dentists in rural areas and may enhance Florida's dental care for underserved populations if it offers a loan forgiveness program. The program could require dentists seeking loan assistance to serve in a rural area (the Panhandle or central, south Florida) and require dentists to serve a certain percentage of Medicaid recipients or participate in the provider network of managed care entities participating in the Medicaid program for a particular period of time. Considering the current lack of state resources, it may be beneficial to limit the number of dentists that may apply to the loan forgiveness program and target resources to areas with the most need for general dentists or specialists." At the time, Florida was one of only eight states that did not have a state loan forgiveness program. According to the American Dental Association, it is one of only 11 states: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Montana, Texas, and Utah as of July 2014. http://www.ada.org/~/media/ADA/Education%20and%20Careers/Files/dental-student-loan-repayment-resource.ashx (Last visited Mar. 2, 2015).
[16] American Dental Education Association, *supra* note 14, at 26; *Financing Dental Education*, *supra* note 14, at 40.

Florida Health Services Corps

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the Department of Health (DOH), to encourage medical professionals to practice in locations that are underserved because of a shortage of qualified professionals.[17] The FHSC was defined[18] as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program[19] or in a medically underserved area.[20] Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.[21] All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.[22] In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.[23]

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.[24]

During the 20 years the program was authorized by law, it was funded only three times. A total of $3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, $971,664 was directed to 18 dentists for an average award of $25,570 per year of service in the program.[25] The 2007 Legislature attempted to reinvigorate the

[17] Ch. 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).
[18] Section 381.0302(2)(b)1., F.S. (2011).
[19] "Public health program" was defined to include a county health department, a children's medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).
[20] "Medically underserved area" was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).
[21] "Medically indigent person" was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).
[22] Section 381.0302(10), F.S. (2011).
[23] Section 381.0302(11), F.S. (2011).
[24] Section 381.0302(6), F.S. (2011).
[25] Email from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).

program by appropriating $700,000 to fund loan repayment assistance for dentists only.[26] However, the appropriation and a related substantive bill were vetoed by the governor.[27] The Legislature repealed the program in 2012.[28]

National Health Service Corps

The NHSC programs provide scholarships and educational loan repayment to primary care providers[29] who agree to practice in areas that are medically underserved. NHSC loan repayment program (LRP) participants fulfill their service requirement by working at NHSC-approved sites in HPSAs. The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services for free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals. The SFS or discounted fee schedule is based upon the Federal Poverty Guidelines, and patient eligibility is determined by annual income and family size.[30]

The LRP provides funds to participants to repay their outstanding qualifying educational loans. Maximum loan reimbursement under the program is $50,000 for a two-year, full-time practice or up to $15,000 for a two-year, half-time clinical practice, although participants may be eligible to continue loan repayment beyond the initial term.[31,32] Participants who breach their LRP agreement are subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. Loan repayments are exempt from federal income and employment taxes and are not included as wages when determining benefits under the Social Security Act.[33] In 2013, there were 38.5 full-time-equivalent NHSC dentists in Florida.[34]

A second NHSC program, the State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies

[26] Ch. 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor's line item veto authority.
[27] *Journal of the Florida Senate*, at 3 (June 12, 2007).
[28] Ch. 2012-184, s. 45, Laws of Fla.
[29] Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.
[30] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps Site Reference Guide*, (April 14, 2014) http://nhsc.hrsa.gov/downloads/sitereference.pdf (last visited Mar. 2, 2015).
[31] The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19 http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb, 27, 2015).
[32] U.S. Department of Health and Human Services, Loan Repayment Program - *Fiscal Year 2015 Application and Program Guidance*, pp. 4-5 (January 2015) http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf (last viewed Feb. 27, 2015).
[33] U.S. Dept. of Health and Human Services, Health Resources and Services Administration, *National Health Service Corps 101* (on file in the Senate Health Policy Committee).
[34] Email from Philip Street, Senior Policy Coordinator, Health Statistics and Performance Management, Florida Dept. of Health (Nov. 19, 2013) (on file with the Senate Committee on Health Policy).

from state-to-state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally-designated HPSA. Like the NHSC loan repayment program awards, assistance provided through an SLRP is not taxable.

In addition, the SLRP requires a $1 state match for every $1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is $50,000 per year, with a minimum service commitment of two years.

Florida does not currently participate in SLRP.

III. Effect of Proposed Changes:

The bill creates the dental care access accounts initiative at the Department of Health (DOH). The initiative is conditioned on the availability of funds and is intended to encourage dentists to practice in dental health professional shortage areas or medically underserved areas or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally-funded migrant health center, or other publicly-funded or not-for-profit health care program designated by the DOH.

The initiative will be developed by the DOH to benefit dentists licensed to practice in this state who demonstrate, as required by DOH rule:

- Active employment by a public health program in a dental health professional shortage area or a medically underserved area; or
- A commitment to opening a private practice in a dental health professional shortage area or medically underserved area by residing in the area, maintaining a Medicaid provider agreement, enrolling with one or more Medicaid managed care plans, expending capital to open an office to serve at least 1,200 patients, and obtaining community financial support.

The DOH is required to establish dental access accounts for dentists who meet the requirements in the bill and to implement an electronic benefits transfer system. Funds from the account may be used only for specific purposes, such as payment of student loans; investment in property, facilities, or equipment necessary to establish an office and payment of transitional expenses related to relocating or opening a dental practice.

Subject to available appropriations, the DOH is required to distribute funds to the dental access accounts in amounts not to exceed $100,000 and no less than $10,000. A state award may not exceed three times the amount contributed to an account in the same year from a local source. The DOH is authorized to accept funds for deposit from local sources.

If a dentist qualifies for an account on the basis of his or her employment with a public health program, the dentist's salary and associated employer expenditures may count as local match for a state award if the salary and employer expenditures are not state funds. State funds may not be used to calculate amounts contributed from local sources.

Accounts may be terminated if the dentist no longer works for a public health program and does not open a dental practice in a designated area within 30 days of terminating employment, the dentist's practice is no longer located in a dental professional shortage area or a medically underserved area, the provider has been terminated from Medicaid, or the provider has participated in any fraudulent activity. The DOH is directed to close an account five years after the first deposit or upon a dentist's termination from the program.

Any remaining funds after five years or from terminated accounts may be awarded to another account or returned to the donor. A dentist is required to repay any funds withdrawn from the account after the occurrence of an event which requires account closure, if the dentist fails to maintain eligibility for the program through employment in a public health program or establishing a dental practice for a minimum of two years, or uses the funds for unauthorized purposes. The DOH is authorized to recover the withdrawn funds through disciplinary enforcement actions and other methods authorized by law.

The DOH is authorized to adopt rules for application procedures that:

- Limit the number of applicants;
- Incorporate a documentation process for evidence of sufficient capital expenditures in opening a dental practice, such as contracts or leases or other acquisitions of a practice location of at least 30 percent of the value of equipment or supplies necessary to operate a practice; and
- Give priority to those applicants practicing in the areas receiving higher rankings by the Department of Economic Opportunity.

The DOH may also establish by rule a process to verify that funds withdrawn from an account have been used for the purposes authorized.

The Department of Economic Opportunity shall rank the dental professional shortage areas and medically underserved areas based on the extent to which limited access to dental care is impeding economic development.

The DOH must develop a marketing plan for the dental care access account initiative with the University of Florida College of Dentistry, the Nova Southeastern College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

Beginning in January 2017, the DOH is required to issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include:

- The number of patients served by dentists who receive funding under the bill;
- The number of Medicaid recipients served by dentists who receive funding under the bill;
- The average number of hours worked and patients served in a week by dentists who receive funding under the bill;
- The number of dentists in each dental health professional shortage area or medically underserved area who receive funding under the bill;
- The amount and source of local matching funds received by the DOH;
- The amount of state funds awarded to dentists under the bill; and
- A complete accounting of the use of funds, by categories identified by the DOH, including, but not limited to, loans, supplies, equipment, rental property payments, real property purchases, and salary and wages.

The DOH is directed under the bill to adopt rules to require dentists to report information to the DOH which is necessary for the DOH to fulfill the reporting requirement.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 606, Floridians living in those areas identified as medically underserved and have little to no access to dental care could benefit from this initiative as it could bring additional dental professionals to their communities. The initiative also permits the grantees to utilize the funds to transition or relocate to new areas and to build or renovate office space in rural communities, which would generate economic growth for small towns and cities.

The ability to maintain good oral health for adults and children enables workers to also be more productive and for children to participate more actively in school activities.

Additionally, dentists who qualify for loan repayment assistance will benefit from a reduction in their student loan debt.

C. Government Sector Impact:

This bill will create a fiscal impact to the Department of Health (DOH) for the costs related to the implementation and management of the dental care access account initiative. The projected impact is $130,341 from the General Revenue Fund for the 2015-2016 fiscal year with a recurring cost of $152,050 from the General Revenue Fund beginning with Fiscal Year 2016-2017.

The initial cost for the electronic benefit transfer contract/vendor is unknown, but the DOH reports a nominal cost of approximately $0.50 per participant per month as a maintenance fee. The DOH also anticipates a withdrawal fee of at least $1 per transaction when a dentist makes a withdrawal from his or her account. The number of dentists qualifying for this initiative is unknown.[35]

The DOH also reports the bill will create a workload impact that current staff is unable to meet. Two additional staff members (2 FTEs) would be required to develop the application process and adopt rules. Staff will also be needed to monitor activity, dentist conduct, dentist membership status, and rulings by the Board of Dentistry on recipients.

The following are the estimated expenditures for the DOH:[36]

Estimated Expenditures (General Revenue)	**1st Year**	**2nd Year Annualization/Recurring**
SALARIES		
1 FTE **Health Care Program Analyst @ $40,948 - pay grade 24**	$41,460	$55,280
1 FTE **Senior Management Analyst II @ $46,381 - pay grade 26**	$46,961	$62,614
EXPENSES		
2 FTEs Calculated with standard DOH professional package (limited travel) @ $15,616	$31,232	$23,468
HUMAN RESOURCES SERVICES		
2 FTEs Calculated with standard DOH Central Office package @ $344	$688	$688

[35] Florida Department of Health, *Senate Bill 606 Analysis*, pp.4-5, (Feb. 6, 2015) (on file with the Senate Committee on Health Policy).
[36] Id.

Estimated Expenditures (General Revenue)	1st Year	2nd Year Annualization/Recurring
Operating Capital Outlay		
Operating Capital Outlay	$0.00	$0.00
Contractual Services		
Estimate for the development, implementation and maintenance of an electronic benefit transfer (EBT) system	$10,000	$10,000
TOTAL ESTIMATED EXPENDITURES	**$130,341**	**$152,050**

The DOH is also directed to develop a marketing plan with Florida-based dental schools. The cost of that marketing plan has not yet been developed by the DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.4019 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 9, 2015:
The committee substitute:

- Requires the Department of Health to submit a report annually, beginning in January 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding, among other things, the number of patients served under the program and a complete accounting of the use of program funding; and
- Clarifies the definition of "public health program" to include federally qualified community health centers, instead of federally funded community health centers, thereby referencing federally qualified health centers as defined under the federal Public Health Service Act.

CS by Health Policy on March 4, 2015:
The committee substitute:

- Adds medically underserved populations to the focus areas of the dental care access account initiative;

- Authorizes the salary and associated employer expenditures of an employee in a public health program to qualify as local match if no state funds contribute to these costs and specifically prohibits state funds from counting toward local match;
- Provides that local funds are to be returned on a pro rata basis;
- Provides standards for rulemaking regarding the demonstration of sufficient capital to show substantial progress in opening a dental practice;
- Requires rule to verify funds are used for allowable purposes; and
- Requires the Department of Health to develop a marketing plan with the state dental schools.

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 Health Policy; and Senators Gaetz, Montford, and Sobel

588-01938-15 2015606c1

A bill to be entitled

An act relating to dental care; creating s. 381.4019, F.S.; establishing a joint local and state dental care access account initiative, subject to the availability of funding; authorizing the creation of dental care access accounts; specifying the purpose of the initiative; defining terms; providing criteria for the selection of dentists for participation in the initiative; providing for the establishment of accounts; requiring the Department of Health to implement an electronic benefit transfer system; providing for the use of funds deposited in the accounts; authorizing the department to distribute state funds to accounts subject to legislative appropriations; authorizing the department to accept contributions from local sources for deposit in designated accounts; limiting the number of years that an account may remain open; providing for the immediate closure of accounts under certain circumstances; authorizing the department to transfer state funds remaining in a closed account at a specified time and to return unspent funds from local sources; requiring a dentist to repay funds in certain circumstances; authorizing the department to pursue disciplinary enforcement actions and to use other legal means to recover funds; requiring the department to establish by rule application procedures and a process to verify the use of funds withdrawn from a dental care access account; requiring the department

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

588-01938-15 2015606c1

to give priority to applications from dentists practicing in certain areas; requiring the Department of Economic Opportunity to rank shortage areas and medically underserved areas; requiring the Department of Health to develop a marketing plan in cooperation with certain dental colleges and the Florida Dental Association; providing an effective date.

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

Section 1. Section 381.4019, Florida Statutes, is created to read:

381.4019 Dental care access accounts.—Subject to the availability of funds, the Legislature establishes a joint local and state dental care access account initiative and authorizes the creation of dental care access accounts to promote economic development by supporting qualified dentists who practice in dental health professional shortage areas or medically underserved areas or who treat a medically underserved population. The Legislature recognizes that maintaining good oral health is integral to overall health status and that the good health of residents of this state is an important contributing factor in economic development. Better health, including better oral health, enables workers to be more productive, reduces the burden of health care costs, and enables children to improve in cognitive development.

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

(a) "Dental health professional shortage area" means a geographic area so designated by the Health Resources and

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Services Administration of the United States Department of Health and Human Services.

(b) "Department" means the Department of Health.

(c) "Medically underserved area" means a geographic area so designated by the Health Resources and Services Administration of the United States Department of Health and Human Services.

(d) "Public health program" means a county health department, the Children's Medical Services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program as designated by the department.

(2) The department shall develop and implement a dental care access account initiative to benefit dentists licensed to practice in this state who demonstrate, as required by the department by rule:

(a) Active employment by a public health program located in a dental health professional shortage area or a medically underserved area; or

(b) A commitment to opening a private practice in a dental health professional shortage area or a medically underserved area evidenced by residing in the designated area, maintaining an active Medicaid provider agreement, enrolling in one or more Medicaid managed care plans, expending sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients, and obtaining financial support from the local community in which the dentist is practicing or intending to open a practice.

(3) The department shall establish dental care access accounts as individual benefit accounts for each dentist who

satisfies the requirements of subsection (2) and is selected by the department for participation. The department shall implement an electronic benefit transfer system that enables each dentist to spend funds from his or her account for the purposes described in subsection (4).

(4) Funds contributed from state and local sources to a dental care access account may be used for one or more of the following purposes:

(a) Repayment of dental school student loans.

(b) Investment in property, facilities, or equipment necessary to establish and operate a dental office consisting of no fewer than two operatories.

(c) Payment of transitional expenses related to the relocation or opening of a dental practice which are specifically approved by the department.

(5) Subject to legislative appropriation, the department shall distribute state funds as an award to each dental care access account. Such awards must be in an amount not more than $100,000 and not less than $10,000, except that a state award may not exceed 3 times the amount contributed to an account in the same year from local sources. If a dentist qualifies for a dental care access account under paragraph (2)(a), the dentist's salary and associated employer expenditures constitute a local match and qualify the account for a state award if the salary and associated expenditures do not come from state funds. State funds may not be included in a determination of the amount contributed to an account from local sources.

(6) The department may accept contributions of funds from local sources for deposit in the account of a dentist designated

by the donor.

(7) The department shall close an account no later than 5 years after the first deposit of state or local funds into that account or immediately upon the occurrence of any of the following:

(a) Termination of the dentist's employment with a public health program, unless, within 30 days of such termination, the dentist opens a private practice in a dental health professional shortage area or medically underserved area.

(b) Termination of the dentist's practice in a designated dental health professional shortage area or medically underserved area.

(c) Termination of the dentist's participation in the Florida Medicaid program.

(d) Participation by the dentist in any fraudulent activity.

(8) Any state funds remaining in a closed account may be awarded and transferred to another account concurrent with the distribution of funds under the next legislative appropriation for the initiative. The department shall return to the donor on a pro rata basis unspent funds from local sources which remain in a closed account.

(9) If the department determines that a dentist has withdrawn account funds after the occurrence of an event specified in subsection (7), has used funds for purposes not authorized in subsection (4), or has not remained eligible for a dental care access account for a minimum of 2 years, the dentist shall repay the funds to his or her account. The department may recover the withdrawn funds through disciplinary enforcement

actions and other methods authorized by law.

(10) The department shall establish by rule:

(a) Application procedures for dentists who wish to apply for a dental care access account. An applicant may demonstrate that he or she has expended sufficient capital to make substantial progress in opening a dental practice that is capable of serving at least 1,200 patients by documenting contracts for the purchase or lease of a practice location and providing executed obligations for the purchase or other acquisition of at least 30 percent of the value of equipment or supplies necessary to operate a dental practice. The department may limit the number of applicants selected and shall give priority to those applicants practicing in the areas receiving higher rankings pursuant to subsection (11). The department may establish additional criteria for selection which recognize an applicant's active engagement with and commitment to the community providing a local match.

(b) A process to verify that funds withdrawn from a dental care access account have been used solely for the purposes described in subsection (4).

(11) The Department of Economic Opportunity shall rank the dental health professional shortage areas and medically underserved areas of the state based on the extent to which limited access to dental care is impeding the area's economic development, with a higher ranking indicating a greater impediment to development.

(12) The department shall develop a marketing plan for the dental care access account initiative in cooperation with the University of Florida College of Dentistry, the Nova

Southeastern University College of Dental Medicine, the Lake Erie College of Osteopathic Medicine School of Dental Medicine, and the Florida Dental Association.

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

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)

4/9/15
Meeting Date

SB 606
Bill Number (if applicable)

Topic Dental Care

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Director of Governmental Affairs

Address 118 E. Jefferson Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 224-1089

Email jahart@floridadent.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 9 /2015
Meeting Date

Topic _____ Bill Number 606 *(if applicable)*

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
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SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 682 (582684)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senator Grimsley
SUBJECT:	Transitional Living Facilities
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 682 revises regulations for transitional living facilities (TLFs). The purpose of these facilities is to provide rehabilitative care in a small residential setting for persons with brain or spinal cord injuries and who need significant care and services to regain their independence. The bill provides admission criteria, client evaluations, and treatment plans. The bill establishes rights for clients in TLFs, screening requirements for facility employees, and penalties for violations.

The bill is not expected to have a fiscal impact on the Agency for Health Care Administration (AHCA) because regulation of TLFs is funded through existing fees and fines.

Except as otherwise provided, the bill is effective July 1, 2015.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue. Swelling of the spinal cord after the injury can cause further damage. After an injury, the "messages" sent between the brain and the other parts of the body no longer flow

through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which may include any combination of the following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel or bladder dysfunction.[1]

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Department of Health (DOH).[2] The program is funded through a percentage of traffic-related fines and surcharges for driving or boating under the influence of alcohol or drugs, fees on temporary license tags, and a percentage of fees from a motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. The program also employs regional managers who supervise staff in their regions and who oversee the local operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation, and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. The program expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education's Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual receiving services must be a legal Florida resident who has suffered a brain or spinal cord injury meeting the state's definition of such injuries;[3] has been referred to the BSCIP central registry; and must be medically stable. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting rather than reside in a skilled nursing facility.

Transitional Living Facilities

Transitional living facilities (TLFs) provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to persons with spinal cord or head injuries. There are currently 14 facilities located in the state.[4] Most of the facilities are small and have between five and 10 beds. One facility,

[1]Florida Spinal Cord Injury Resource Center, *Family and Survivor's Guide*, http://fscirc.com/what-is-a-sci (last visited Feb. 23, 2015).
[2] Florida Department of Health, http://www.floridahealth.gov/licensing-and-regulation/brain-and-spinal-cord-injury-program-site-survey-inspections/BSCIP%20Rules%20and%20Statutes/index.html. (Last visited Feb. 23, 2015).
[3] Section 381.745, F.S., defines "brain or spinal cord injury" as either a lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: motor deficit, sensory deficit, or bowel and bladder dysfunction; or an insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.
[4] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Feb. 23, 2015).

however, is licensed for 116 beds (Florida Institute for Neurologic Rehabilitation in Wauchula). The facilities are located primarily in central Florida. The AHCA is the licensing authority and one of the regulatory authorities which oversees TLFs under part II of ch. 408, F.S., part V of ch. 400, F.S., and Rule 59A-17 of the Florida Administrative Code. The current licensure fee is $4,588 plus a $90 per-bed fee per biennium.[5]

The AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH to monitor services provided for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.[6]

Section 400.805, F.S., provides requirements for TLFs. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a facility, as well as requiring all facility personnel to submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires the AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of TLFs.[7]

The Brain and Spinal Cord Injury Advisory Council has the right to enter and inspect transitional living facilities.[8] In addition, designated representatives of the AHCA, the local fire marshal, and other agencies have access to the facilities and clients.[9]

According to a news report from Bloomberg dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida, were abused, neglected, and confined. The news report was based on information from current and former clients and their family members, criminal charging documents, civil complaints, and advocates for the disabled.[10] The employees were terminated from employment with the facility and face criminal charges for abusing clients. The AHCA most recently inspected the facility April 9, 2014, and found no deficiencies.[11]

III. Effect of Proposed Changes:

Section 1 creates and designates ss. 400.997 through 400.9985, F.S., as part XI of ch. 400, F.S., entitled "Transitional Living Facilities."

Under the newly-created s. 400.997, F.S., the bill provides legislative intent that TLFs are to assist persons with brain and spinal cord injuries to achieve independent living and return to the community.

The bill defines the terms:

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[5] The AHCA, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[6] Supra n. 5
[7] Supra n. 5
[8] Section 400.805(4), F.S.
[9] Supra n. 5
[10] David Armstrong, *Abuse of Brain Injured Americans Scandalizes U.S.*, BLOOMBERG, Jan. 7, 2012.
[11] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Feb. 23, 2015).

- "Chemical restraint" as a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility and which is used for client protection or safety and is not required for the treatment of medical conditions or symptoms;
- "Physical restraint" as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body which cannot easily be removed and restricts freedom of movement or normal access to one's own body; and
- "Seclusion" as the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving, while not meaning isolation due to a person's medical condition or symptoms.

The bill also moves the definition of a TLF from s. 381.475, F.S., and defines "agency" as the AHCA and "department" as the DOH.

Under the newly-created s. 400.9972, F.S., the bill provides licensure requirements and application fees for TLFs. The bill codifies the current license fee of $4,588 and the per-bed fee of $90.[12] The bill requires certain information from the licensure applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, proof of a satisfactory fire safety inspection, and documentation of a sanitation inspection by a county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. The AHCA may conduct an inspection of a facility after the facility submits proof of accreditation.

Admission Criteria

Under the newly created s. 400.9973, F.S., the bill sets standards that TLFs must meet for client admission, transfer, and discharge from the facility. The facility is required to establish admission, transfer, and discharge policies and procedures in writing.

Only clients who have a brain or spinal cord injury may be admitted to a TLF. Clients may be admitted to the facility only through a prescription by a licensed physician, physician assistant (PA), or advanced registered nurse practitioner (ARNP) and must remain under the care of a health care practitioner for the duration of the client's stay in the facility. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who are a danger to themselves or others as determined by a physician, PA, ARNP, or mental health practitioner. The facility may not admit clients requiring nursing supervision on a 24-hour basis or who are bedridden.

[12] Section 400.805(2)(b), F.S., authorizes a license fee of $4,000 and a per bed fee of $75.50. Pursuant to s. 408.805(2), F.S., The AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is $4,588 and $90 per bed and the bill uses these amounts.

A facility's nursing or medical director must complete an initial evaluation of a client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after a client's admission to the facility. An initial treatment plan must be implemented within four days of admission. A facility must also develop, and update at least monthly, a discharge plan for each client and must discharge a client who no longer requires the facility's specialized services as soon as practicable. A facility must provide at least 30 days' notice to the client before transferring or discharging him or her.

Client Plans and Evaluation

Under the newly created s. 400.9974, F.S., the bill requires that a facility must develop a comprehensive treatment plan for each client within 30 days after an initial treatment plan is developed. An interdisciplinary team, including the client, if appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- The physician's, PA's, or ARNP's orders, diagnosis, medical history, physical examinations and rehabilitation needs;
- A nursing evaluation with physician, PA, or ARNP orders for immediate care completed at admission; and
- A comprehensive assessment of the client's functional status and the services he or she needs to become independent and return to the community.

A facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Under the newly created s. 400.9975, F.S., the bill provides for certain rights of each client. Specifically, a facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors; and
- Has the opportunity to:
  - Participate in community services and activities;
  - Manage his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
  - Participate in physical exercise regularly and to be outdoors several times a week;
  - Enjoy civil and religious liberties;
  - Have adequate access to appropriate health care services; and
  - Present grievances and recommend changes in policies, procedures, and services.

A facility must:

- Promote participation of a client's representative in the process of treatment for the client;
- Answer communications from a client's family and friends promptly;
- Promote visits by individuals with a relationship to the client at any reasonable hour;
- Allow residents to leave from the facility to visit or to take trips or vacations; and
- Promptly notify client representatives of any significant incidents or changes in condition.

The bill requires a facility administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to the AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call the AHCA, the central abuse hotline, or Disabilities Rights of Florida. The facility is prohibited from taking retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Medication

Under the newly created s. 400.9976, F.S., the bill requires a TLF to record a client's medication administration, including self-administration, and each dose of medication. The medication must be administered in compliance with the physician's, PA's, or ARNP's orders. Drug administration errors and adverse drug reactions must be recorded and reported immediately to the physician, PA, or ARNP. The interdisciplinary team that develops a client's treatment plan must determine whether the client is capable of self-administration of medications.

Under the newly created s. 400.9977, F.S., unlicensed direct care services staff may assist residents with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility provide training, develop procedures, and maintain records regarding assistance with medication by unlicensed staff. Training must be conducted by a registered nurse, a licensed physician, or a licensed pharmacist. The AHCA is required to adopt rules to implement this section.

Under the newly created s. 400.9979, F.S., the bill requires that physical and chemical restraints must be ordered for clients before such restraints may be used by a facility. The bill requires that an order for restraints must be documented by a client's physician, PA, or ARNP and be consistent with the policies and procedures adopted by the facility. The client's representative or responsible party must be notified as soon as practicable after the use of restraints. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued need for the medication;
- Level of the medication in client's blood; and
- The need to adjust the prescription.

A facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Employees

Under the newly created s. 400.9978, F.S., the bill specifies that a TLF is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes a facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;

- Train employees through orientation and ongoing sessions on abuse prohibition practices;
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents, and grievances without fear of retribution;
- Identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial internal reporting and the reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under ch. 39, F.S. and ch. 415, F.S., to the appropriate licensing authorities.

Under the newly created s. 400.998, F.S., the bill requires all TLF personnel to complete a level 2 background screening and requires the facility to maintain personnel records containing the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certifications held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires a facility to:

- Implement infection control policies and procedures;
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times;
- Designate one person as administrator who is responsible for the overall management of the facility;
- Designate one person as program director who is responsible for supervising the therapeutic and behavioral staff;
- Designate in writing a person responsible for the facility when the administrator is absent for more than 24 hours;
- Designate a person to be responsible when the program director is absent;
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency; and
- Maintain written records in a form and system that complies with standard medical and business practices and which is available for submission to the AHCA upon request. The records must include:
  - A daily census;
  - A report of all accidental or unusual incidents involving clients or staff members who caused or had the potential to cause injury or harm to any person or property within the facility;
  - Agreements with third party providers;
  - Agreements with consultants employed by the facility; and
  - Documentation of each consultant's visits and required written, dated reports.

Under the newly created s. 400.9981, F.S., the bill grants clients the option of using their own personal belongings and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein does not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety

bond with the AHCA in an amount equal to twice the average monthly income of the client. If the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on the client's behalf and a copy of such statement must be given to the client and retained in the client's file and be available for inspection by the AHCA.

The bill states that a facility, upon consent of the client, shall provide for the safekeeping in the facility of personal effects not in excess of $1,000 and funds of the client not in excess of $500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to, or due to, a client, or expendable from his or her account, which is received by licensee, shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates that any person who intentionally withholds a client's property or funds; demands, beneficially receives, or contracts for payment of all or any part of a client's personal property in satisfaction of the facility rate for supplies or services; or borrows from a client's personal funds, unless agreed to by written contract, commits a misdemeanor of the first degree. The bill mandates any licensee, administrator or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power, commits a felony of the third degree.

In the event of the death of a client, a TLF must return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill authorizes the AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Under the newly created s. 400.9982, F.S., the bill authorizes the AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. The AHCA may adopt and enforce rules to implement this part and part II of ch. 408, F.S., including:

- The location of TLFs;
- The qualifications of personnel;
- The requirements for personnel procedures, reporting procedures, and documentation;
- Services provided to clients; and
- The preparation and annual update of a comprehensive emergency management plan.

Under s. 400.9983, F.S., the bill revises penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned, or widespread.[13] The penalties in the bill take into account the frequency of the problems within the facility as well. Violations are also separated into class I through class IV based on severity with class I violations being the most serious and class IV being the least serious. Class I violations put clients in imminent danger. Class II violations directly threaten the safety of clients. Class III violations indirectly threaten the safety of clients. Class IV violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.[14]

Under the bill, fines for violations will be levied at the following amounts, but fines for class III and class IV violations will not be levied if the violations are corrected within timeframes specified by the AHCA:

Class of Violation/Correction	Isolated	Patterned	Widespread
I - Regardless of correction	$5,000	$7,500	$10,000
II - Regardless of correction	$1,000	$2,500	$5,000
III - Only if uncorrected	$500	$750	$1,000
IV - Only if uncorrected	Fines for Class IV violations may range from $100 to $200.		

Under the newly created s. 400.9984, F.S., the bill authorizes the AHCA to petition a court for the appointment of a receiver for TLFs using the provisions of s. 429.22, F.S.

Under the newly created s. 400.9985, F.S., the bill requires the AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure that relevant information pertaining to the regulation of TLFs and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries.

Sections 2 and 3 transfer s. 400.805, F.S., to the newly created s. 400.9986, F.S., and provide for the repeal of s. 400.9986, F.S., on July 1, 2016.

Section 4 renames the title of part V of chapter 400 as "Intermediate Care Facilities" to remove "Transitional Living Facilities" from the title as the bill creates a new statutory part for such facilities.

Section 5 amends s. 381.745, F.S., to conform to changes in the definition of a TLF.

Section 6 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the DOH to develop rules with the AHCA for the regulation of transitional living facilities. Provisions in this statutory section are moved and revised in the newly created sections 400.997 through 400.9984, F.S.

[13] *See* s. 408.813(2), F.S.
[14] *See* s. 408.813, F.S.

Section 7 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council's appointment of a committee to regulate TLFs. These duties are duplicative of the regulation by the AHCA under the bill and are therefore removed.

Section 8 amends s. 400.93, F.S., to conform a reference to TLFs.

Section 9 amends s. 408.802, F.S., to conform a reference to TLFs.

Section 10 amends s. 408.820, F.S., to conform a reference to TLFs.

Section 11 reenacts s. 381.79, F.S., to incorporate amendments made to s. 381.75, F.S.

Section 12 creates a non-statutory section of Florida law requiring that TLFs that were licensed prior to the effective date of the bill must be licensed under the new requirements of the bill no later than July 1, 2016.

Section 13 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Transitional living facilities may incur increased costs due to the increased requirements contained in PCS/SB 682.

C. Government Sector Impact:

None.[15]

[15] The Agency for Health Care Administration, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.745, 381.75, 381.78, 400.93, 408.802, and 408.820.

This bill creates the following sections of the Florida Statutes: 400.997, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, 400.9984, and 400.9985.

This bill reenacts section 381.79 of the Florida Statutes.

This bill repeals section 400.805 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

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 Health and Human Services on March 19, 2015:
The committee substitute includes a technical amendment to properly reenact s. 381.79, F.S., in section 11 of the bill.

B. Amendments:

None.

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

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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to transitional living facilities; creating part XI of ch. 400, F.S.; creating s. 400.997, F.S.; providing legislative intent; creating s. 400.9971, F.S.; providing definitions; creating s. 400.9972, F.S.; requiring the licensure of transitional living facilities; providing license fees and application requirements; requiring accreditation of licensed facilities; creating s. 400.9973, F.S.; providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; creating s. 400.9974, F.S.; requiring a comprehensive treatment plan to be developed for each client; providing plan and staffing requirements; requiring certain consent for continued treatment in a transitional living facility; creating s. 400.9975, F.S.; providing licensee responsibilities with respect to each client and specified others and requiring written notice of such responsibilities to be provided; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or taking other retaliatory action under certain circumstances; requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures governing the release of client

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information; creating s. 400.9976, F.S.; providing licensee requirements relating to administration of medication; requiring maintenance of medication administration records; providing requirements for the self-administration of medication by clients; creating s. 400.9977, F.S.; providing training and supervision requirements for the administration of medications by unlicensed staff; specifying who may conduct the training; requiring licensees to adopt certain policies and procedures and maintain specified records with respect to the administration of medications by unlicensed staff; requiring the Agency for Health Care Administration to adopt rules; creating s. 400.9978, F.S.; providing requirements for the screening of potential employees and training and monitoring of employees for the protection of clients; requiring licensees to implement certain policies and procedures to protect clients; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; creating s. 400.9979, F.S.; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; providing a limitation on the duration of an emergency treatment order; requiring notification of certain persons when restraint or seclusion is imposed; authorizing the agency to adopt rules; creating s. 400.998, F.S.; providing background screening requirements for licensee personnel;


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requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; creating s. 400.9981, F.S.; providing licensee responsibilities with respect to the property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds or other property received by a licensee and credited to the client; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the agency to adopt rules; creating s. 400.9982, F.S.; providing legislative intent; authorizing the agency to adopt and enforce rules establishing specified standards for transitional living facilities and personnel thereof; creating s. 400.9983, F.S.; classifying certain violations and providing penalties therefor; providing administrative fines for specified classes of violations; creating s. 400.9984, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9985, F.S.; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop


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electronic information systems for certain purposes; transferring and renumbering s. 400.805, F.S., as s. 400.9986, F.S.; repealing s. 400.9986, F.S., relating to transitional living facilities, on a specified date; revising the title of part V of ch. 400, F.S.; amending s. 381.745, F.S.; revising the definition of the term "transitional living facility," to conform to changes made by the act; amending s. 381.75, F.S.; revising the duties of the Department of Health and the agency relating to transitional living facilities; amending ss. 381.78, 400.93, 408.802, and 408.820, F.S.; conforming provisions to changes made by the act; reenacting s. 381.79(1), F.S., relating to the Brain and Spinal Cord Injury Program Trust Fund, to incorporate the amendment made by the act to s. 381.75, F.S., in a reference thereto; providing for the act's applicability to licensed transitional living facilities licensed on specified dates; providing effective dates.

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

Section 1. Part XI of chapter 400, Florida Statutes, consisting of sections 400.997 through 400.9986, is created to read:

PART XI

TRANSITIONAL LIVING FACILITIES

400.997 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living

facilities and require the development, establishment, and enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client, consistent with optimum improvement of the client's condition. The goal of a transitional living program for persons who have brain or spinal cord injuries is to assist each person who has such an injury to achieve a higher level of independent functioning and to enable the person to reenter the community. It is also the policy of the state that the restraint or seclusion of a client is justified only as an emergency safety measure used in response to danger to the client or others. It is therefore the intent of the Legislature to achieve an ongoing reduction in the use of restraint or seclusion in programs and facilities that serve persons who have brain or spinal cord injuries.

400.9971 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

(3) "Client's representative" means the parent of a child client or the client's guardian, designated representative, designee, surrogate, or attorney in fact.

(4) "Department" means the Department of Health.

(5) "Physical restraint" means a manual method to restrict freedom of movement of or normal access to a person's body, or a physical or mechanical device, material, or equipment attached or adjacent to the person's body that the person cannot easily remove and that restricts freedom of movement of or normal access to the person's body, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, or a Posey restraint. The term includes any device that is not specifically manufactured as a restraint but is altered, arranged, or otherwise used for this purpose. The term does not include bandage material used for the purpose of binding a wound or injury.

(6) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such prevention may be accomplished by imposition of a physical barrier or by action of a staff member to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person's medical condition or symptoms.

(7) "Transitional living facility" means a site where specialized health care services are provided to persons who have brain or spinal cord injuries, including, but not limited to, rehabilitative services, behavior modification, community reentry training, aids for independent living, and counseling.

400.9972 License required; fee; application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or


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applying for licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a transitional living facility in this state. However, this part does not require a provider licensed by the agency to obtain a separate transitional living facility license to serve persons who have brain or spinal cord injuries as long as the services provided are within the scope of the provider's license.

(2) In accordance with this part, an applicant or a licensee shall pay a fee for each license application submitted under this part. The license fee shall consist of a $4,588 license fee and a $90 per-bed fee per biennium and shall conform to the annual adjustment authorized in s. 408.805.

(3) An applicant for licensure must provide:

(a) The location of the facility for which the license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(b) Proof of liability insurance as provided in s. 624.605(1)(b).

(c) Proof of compliance with local zoning requirements, including compliance with the requirements of chapter 419 if the proposed facility is a community residential home.

(d) Proof that the facility has received a satisfactory firesafety inspection.

(e) Documentation that the facility has received a satisfactory sanitation inspection by the county health department.

(4) The applicant's proposed facility must attain and continuously maintain accreditation by an accrediting


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organization that specializes in evaluating rehabilitation facilities whose standards incorporate licensure regulations comparable to those required by the state. An applicant for licensure as a transitional living facility must acquire accreditation within 12 months after issuance of an initial license. The agency shall accept the accreditation survey report of the accrediting organization in lieu of conducting a licensure inspection if the standards included in the survey report are determined by the agency to document that the facility substantially complies with state licensure requirements. Within 10 days after receiving the accreditation survey report, the applicant shall submit to the agency a copy of the report and evidence of the accreditation decision as a result of the report. The agency may conduct an inspection of a transitional living facility to ensure compliance with the licensure requirements of this part, to validate the inspection process of the accrediting organization, to respond to licensure complaints, or to protect the public health and safety.

400.9973 Client admission, transfer, and discharge.—

(1) A transitional living facility shall have written policies and procedures governing the admission, transfer, and discharge of clients.

(2) The admission of a client to a transitional living facility must be in accordance with the licensee's policies and procedures.

(3) To be admitted to a transitional living facility, an individual must have an acquired internal or external injury to the skull, the brain, or the brain's covering, caused by a traumatic or nontraumatic event, which produces an altered state

of consciousness, or a spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of at least two of the following deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) A cognitive deficit.

(d) A behavioral deficit.

(e) Bowel and bladder dysfunction.

(4) A client whose medical condition and diagnosis do not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician, physician assistant, or advanced registered nurse practitioner and must remain under the care of a licensed physician, physician assistant, or advanced registered nurse practitioner for the duration of the client's stay in the facility.

(6) A transitional living facility may not admit a person whose primary admitting diagnosis is mental illness or an intellectual or developmental disability.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the person is free of apparent signs and

symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, or advanced registered nurse practitioner or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client's admission to the facility. An initial comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) A transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be eligible for discharge. A discharge plan must be reviewed and updated as necessary but at least once monthly.

(10) A transitional living facility shall discharge a client as soon as practicable when the client no longer requires the specialized services described in s. 400.9971(7), when the

client is not making measurable progress in accordance with the client's comprehensive treatment plan, or when the transitional living facility is no longer the most appropriate and least restrictive treatment option.

(11) A transitional living facility shall provide at least 30 days' notice to a client of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This subsection does not apply if a client voluntarily terminates residency.

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced registered nurse practitioner, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at least once monthly.

(2) The comprehensive treatment plan must include:

(a) Orders obtained from the physician, physician assistant, or advanced registered nurse practitioner and the client's diagnosis, medical history, physical examination, and

rehabilitative or restorative needs.

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant, or advanced registered nurse practitioner, which shall be completed when the client is admitted.

(c) A comprehensive, accurate, reproducible, and standardized assessment of the client's functional capability; the treatments designed to achieve skills, behaviors, and other conditions necessary for the client to return to the community; and specific measurable goals.

(d) Steps necessary for the client to achieve transition into the community and estimated length of time to achieve those goals.

(3) The client or, if appropriate, the client's representative must consent to the continued treatment at the transitional living facility. Consent may be for a period of up to 6 months. If such consent is not given, the transitional living facility shall discharge the client as soon as practicable.

(4) A client must receive the professional program services needed to implement the client's comprehensive treatment plan.

(5) The licensee must employ qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of the client's comprehensive treatment plan.

(6) A client must receive a continuous treatment program that includes appropriate, consistent implementation of specialized and general training, treatment, health services, and related services and that is directed toward:

(a) The acquisition of the behaviors and skills necessary for the client to function with as much self-determination and independence as possible.

(b) The prevention or deceleration of regression or loss of current optimal functional status.

(c) The management of behavioral issues that preclude independent functioning in the community.

400.9975 Licensee responsibilities.—

(1) The licensee shall ensure that each client:

(a) Lives in a safe environment free from abuse, neglect, and exploitation.

(b) Is treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retains and uses his or her own clothes and other personal property in his or her immediate living quarters to maintain individuality and personal dignity, except when the licensee demonstrates that such retention and use would be unsafe, impractical, or an infringement upon the rights of other clients.

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visits with any person of his or her choice. Upon request, the licensee shall modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as no

longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall retain the right to call the central abuse hotline, the agency, and Disability Rights Florida at any time.

(e) Has the opportunity to participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Has the opportunity to manage his or her financial affairs unless the client or, if applicable, the client's representative authorizes the administrator of the facility to provide safekeeping for funds as provided under this part.

(g) Has reasonable opportunity for regular exercise more than once per week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(h) Has the opportunity to exercise civil and religious liberties, including the right to independent personal decisions. However, a religious belief or practice, including attendance at religious services, may not be imposed upon any client.

(i) Has access to adequate and appropriate health care consistent with established and recognized community standards.

(j) Has the opportunity to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. A licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for

investigating, tracking, managing, and responding to complaints by a client or, if applicable, the client's representative and an appeals process. The appeals process must include access to Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

(a) Promote participation of the client's representative in the process of providing treatment to the client unless the representative's participation is unobtainable or inappropriate.

(b) Answer communications from the client's family, guardians, and friends promptly and appropriately.

(c) Promote visits by persons with a relationship to the client at any reasonable hour, without requiring prior notice, in any area of the facility that provides direct care services to the client, consistent with the client's and other clients' privacy, unless the interdisciplinary team determines that such a visit would not be appropriate.

(d) Promote opportunities for the client to leave the facility for visits, trips, or vacations.

(e) Promptly notify the client's representative of a significant incident or change in the client's condition, including, but not limited to, serious illness, accident, abuse, unauthorized absence, or death.

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and is read or explained to clients who cannot read. This notice shall be provided to clients in a manner that is clearly legible,

shall include the statewide toll-free telephone number for reporting complaints to the agency, and shall include the words: "To report a complaint regarding the services you receive, please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]...." The statewide toll-free telephone number for the central abuse hotline shall be provided to clients in a manner that is clearly legible and shall include the words: "To report abuse, neglect, or exploitation, please call toll-free ...[telephone number]...." The licensee shall ensure a client's access to a telephone where telephone numbers are posted as required by this subsection.

(4) A licensee or employee of a facility may not serve notice upon a client to leave the premises or take any other retaliatory action against another person solely because of the following:

(a) The client or other person files an internal or external complaint or grievance regarding the facility.

(b) The client or other person appears as a witness in a hearing inside or outside the facility.

(5) Before or at the time of admission, the client and, if applicable, the client's representative shall receive a copy of the licensee's responsibilities, including grievance procedures and telephone numbers, as provided in this section.

(6) The licensee must develop and implement policies and procedures governing the release of client information, including consent necessary from the client or, if applicable, the client's representative.

400.9976 Administration of medication.—

(1) An individual medication administration record must be

maintained for each client. A dose of medication, including a self-administered dose, shall be properly recorded in the client's record. A client who self-administers medication shall be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time that medication is placed into each client's pill organizer. All medications must be administered in compliance with orders of a physician, physician assistant, or advanced registered nurse practitioner.

(2) If an interdisciplinary team determines that self-administration of medication is an appropriate objective, and if the physician, physician assistant, or advanced registered nurse practitioner does not specify otherwise, the client must be instructed by the physician, physician assistant, or advanced registered nurse practitioner to self-administer his or her medication without the assistance of a staff person. All forms of self-administration of medication, including administration orally, by injection, and by suppository, shall be included in the training. The client's physician, physician assistant, or advanced registered nurse practitioner must be informed of the interdisciplinary team's decision that self-administration of medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician, physician assistant, or advanced registered nurse

practitioner.

400.9977 Assistance with medication.—

(1) Notwithstanding any provision of part I of chapter 464, the Nurse Practice Act, unlicensed direct care services staff who provide services to clients in a facility licensed under this part may administer prescribed, prepackaged, and premeasured medications after the completion of training in medication administration and under the general supervision of a registered nurse as provided under this section and applicable rules.

(2) Training required by this section and applicable rules shall be conducted by a registered nurse licensed under chapter 464, a physician licensed under chapter 458 or chapter 459, or a pharmacist licensed under chapter 465.

(3) A facility that allows unlicensed direct care service staff to administer medications pursuant to this section shall:

(a) Develop and implement policies and procedures that include a plan to ensure the safe handling, storage, and administration of prescription medications.

(b) Maintain written evidence of the expressed and informed consent for each client.

(c) Maintain a copy of the written prescription, including the name of the medication, the dosage, and the administration schedule and termination date.

(d) Maintain documentation of compliance with required training.

(4) The agency shall adopt rules to implement this section.

400.9978 Protection of clients from abuse, neglect, mistreatment, and exploitation.—The licensee shall develop and

implement policies and procedures for the screening and training of employees; the protection of clients; and the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. The licensee shall identify clients whose personal histories render them at risk for abusing other clients, develop intervention strategies to prevent occurrences of abuse, monitor clients for changes that would trigger abusive behavior, and reassess the interventions on a regular basis. A licensee shall:

(1) Screen each potential employee for a history of abuse, neglect, mistreatment, or exploitation of clients. The screening shall include an attempt to obtain information from previous and current employers and verification of screening information by the appropriate licensing boards.

(2) Train employees through orientation and ongoing sessions regarding issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation; appropriate interventions to address aggressive or catastrophic reactions of clients; the process for reporting allegations without fear of reprisal; and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information regarding how and to whom they may report concerns, incidents, and grievances without fear of retribution and provide feedback regarding the concerns that are expressed. A licensee shall identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients and ensuring that the assigned staff have knowledge of each client's care needs.

(c) Identifying inappropriate staff behaviors, such as using derogatory language, rough handling of clients, ignoring clients while giving care, and directing clients who need toileting assistance to urinate or defecate in their beds.

(d) Assessing, monitoring, and planning care for clients with needs and behaviors that might lead to conflict or neglect, such as a history of aggressive behaviors including entering other clients' rooms without permission, exhibiting self-injurious behaviors or communication disorders, requiring intensive nursing care, or being totally dependent on staff.

(4) Identify events, such as suspicious bruising of clients, occurrences, patterns, and trends that may constitute abuse and determine the direction of the investigation.

(5) Investigate alleged violations and different types of incidents, identify the staff member responsible for initial reporting, and report results to the proper authorities. The licensee shall analyze the incidents to determine whether policies and procedures need to be changed to prevent further incidents and take necessary corrective actions.

(6) Protect clients from harm during an investigation.

(7) Report alleged violations and substantiated incidents, as required under chapters 39 and 415, to the licensing authorities and all other agencies, as required, and report any

knowledge of actions by a court of law that would indicate an employee is unfit for service.

400.9979 Restraint and seclusion; client safety.—

(1) A facility shall provide a therapeutic milieu that supports a culture of individual empowerment and responsibility. The health and safety of the client shall be the facility's primary concern at all times.

(2) The use of physical restraints must be ordered and documented by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the policies and procedures adopted by the facility. The client or, if applicable, the client's representative shall be informed of the facility's physical restraint policies and procedures when the client is admitted.

(3) The use of chemical restraints shall be limited to prescribed dosages of medications as ordered by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative shall be informed of the facility's chemical restraint policies and procedures when the client is admitted.

(4) Based on the assessment by a physician, physician assistant, or advanced registered nurse practitioner, if a client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced registered nurse practitioner may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical

restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more than 24 hours.

(b) Whenever a client is medicated under this subsection, the client's representative or a responsible party and the client's physician, physician assistant, or advanced registered nurse practitioner shall be notified as soon as practicable.

(5) A client who is prescribed and receives a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her physician, physician assistant, or advanced registered nurse practitioner at least monthly to assess:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood.

(c) The need for adjustments to the prescription.

(6) The licensee shall ensure that clients are free from unnecessary drugs and physical restraints and are provided treatment to reduce dependency on drugs and physical restraints.

(7) The licensee may only employ physical restraints and seclusion as authorized by the facility's written policies, which shall comply with this section and applicable rules.

(8) Interventions to manage dangerous client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare, and civil and human rights of a client are adequately protected.

(9) A facility shall notify the parent, guardian, or, if applicable, the client's representative when restraint or seclusion is employed. The facility must provide the

notification within 24 hours after the restraint or seclusion is employed. Reasonable efforts must be taken to notify the parent, guardian, or, if applicable, the client's representative by telephone or e-mail, or both, and these efforts must be documented.

(10) The agency may adopt rules that establish standards and procedures for the use of restraints, restraint positioning, seclusion, and emergency treatment orders for psychotropic medications, restraint, and seclusion. If rules are adopted, the rules must include duration of restraint, staff training, observation of the client during restraint, and documentation and reporting standards.

400.998 Personnel background screening; administration and management procedures.—

(1) The agency shall require level 2 background screening for licensee personnel as required in s. 408.809(1)(e) and pursuant to chapter 435 and s. 408.809.

(2) The licensee shall maintain personnel records for each staff member that contain, at a minimum, documentation of background screening, a job description, documentation of compliance with the training requirements of this part and applicable rules, the employment application, references, a copy of each job performance evaluation, and, for each staff member who performs services for which licensure or certification is required, a copy of all licenses or certification held by that staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include the policies and procedures in the

licensee's policy manual.

(b) Maintain liability insurance as defined in s. 624.605(1)(b).

(c) Designate one person as an administrator to be responsible and accountable for the overall management of the facility.

(d) Designate in writing a person to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director to be responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency management plan, pursuant to s. 400.9982(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations shall also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days after receipt of the plan and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that

comply with medical and business practices and make the records available by the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of each accident or unusual incident involving a client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. The record shall contain a clear description of each accident or incident; the names of the persons involved; a description of medical or other services provided to these persons, including the provider of the services; and the steps taken to prevent recurrence of such accident or incident.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of a consultant's visits and required written and dated reports.

400.9981 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing a roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her presence therein does not confer on a licensee or administrator, or an employee or representative thereof, any authority to manage, use, or dispose of the property of the client, and the admission or presence of a client does not confer on such person

any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

(3) A licensee or administrator, or an employee or representative thereof, may:

(a) Not act as the guardian, trustee, or conservator for a client or a client's property.

(b) Act as a competent client's payee for social security, veteran's, or railroad benefits if the client provides consent and the licensee files a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that are received by a licensee.

(c) Act as the attorney in fact for a client if the licensee files a surety bond with the agency in an amount equal to twice the average monthly income of the client, plus the value of a client's property under the control of the attorney in fact.

The surety bond required under paragraph (b) or paragraph (c) shall be executed by the licensee as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the licensee with the requirements of licensure and is payable to the agency for the benefit of a client who suffers a financial loss as a result of the misuse or misappropriation of funds held pursuant to this subsection. A surety company that cancels or does not renew the bond of a licensee shall notify the agency in writing at least 30 days before the action, giving the reason for cancellation or


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nonrenewal. A licensee or administrator, or an employee or representative thereof, who is granted power of attorney for a client of the facility shall, on a monthly basis, notify the client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of the notification given to the client shall be retained in the client's file and available for agency inspection.

(4) A licensee, with the consent of the client, shall provide for safekeeping in the facility of the client's personal effects of a value not in excess of $1,000 and the client's funds not in excess of $500 cash and shall keep complete and accurate records of the funds and personal effects received. If a client is absent from a facility for 24 hours or more, the licensee may provide for safekeeping of the client's personal effects of a value in excess of $1,000.

(5) Funds or other property belonging to or due to a client or expendable for the client's account that are received by a licensee shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. The funds held in trust shall be used or otherwise expended only for the account of the client. At least once every month, except pursuant to an order of a court of competent jurisdiction, the licensee shall furnish the client and, if applicable, the client's representative with a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. The licensee shall furnish the statement annually and upon discharge or transfer of a client. A


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governmental agency or private charitable agency contributing funds or other property to the account of a client is also entitled to receive a statement monthly and upon the discharge or transfer of the client.

(6)(a) In addition to any damages or civil penalties to which a person is subject, a person who:

1. Intentionally withholds a client's personal funds, personal property, or personal needs allowance;

2. Demands, beneficially receives, or contracts for payment of all or any part of a client's personal property or personal needs allowance in satisfaction of the facility rate for supplies and services; or

3. Borrows from or pledges any personal funds of a client, other than the amount agreed to by written contract under s. 429.24,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A licensee or administrator, or an employee, or representative thereof, who is granted power of attorney for a client and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) In the event of the death of a client, a licensee shall return all refunds, funds, and property held in trust to the client's personal representative, if one has been appointed at the time the licensee disburses such funds, or, if not, to the client's spouse or adult next of kin named in a beneficiary designation form provided by the licensee to the client. If the

client does not have a spouse or adult next of kin or such person cannot be located, funds due to be returned to the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. The funds shall be kept separate from the funds and property of the licensee and other clients of the facility. If the funds of the deceased client are not disbursed pursuant to the Florida Probate Code within 2 years after the client's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.

(8) The agency, by rule, may clarify terms and specify procedures and documentation necessary to administer the provisions of this section relating to the proper management of clients' funds and personal property and the execution of surety bonds.

400.9982 Rules establishing standards.—

(1) It is the intent of the Legislature that rules adopted and enforced pursuant to this part and part II of chapter 408 include criteria to ensure reasonable and consistent quality of care and client safety. The rules should make reasonable efforts to accommodate the needs and preferences of the client to enhance the client's quality of life while residing in a transitional living facility.

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which may include reasonable and fair criteria with respect to:

(a) The location of transitional living facilities.

(b) The qualifications of personnel, including management,

medical, nursing, and other professional personnel and nursing assistants and support staff, who are responsible for client care. The licensee must employ enough qualified professional staff to carry out and monitor interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

400.9983 Violations; penalties.—A violation of this part or any rule adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as follows:

(1) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of $5,000 for an isolated

violation, $7,500 for a patterned violation, or $10,000 for a widespread violation. Violations may be identified, and a fine must be levied, notwithstanding the correction of the deficiency giving rise to the violation.

(2) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of $1,000 for an isolated violation, $2,500 for a patterned violation, or $5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(3) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine of $500 for an isolated violation, $750 for a patterned violation, or $1,000 for a widespread violation. If a deficiency giving rise to a class III violation is corrected within the time specified by the agency, the fine may not be imposed.

(4) Class "IV" violations are defined in s. 408.813. The agency shall impose for a cited class IV violation an administrative fine of at least $100 but not exceeding $200 for each violation. If a deficiency giving rise to a class IV violation is corrected within the time specified by the agency, the fine may not be imposed.

400.9984 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

400.9985 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the

regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 2. Section 400.805, Florida Statutes, is transferred and renumbered as s. 400.9986, Florida Statutes.

Section 3. Effective July 1, 2016, s. 400.9986, Florida Statutes, is repealed.

Section 4. The title of part V of chapter 400, Florida Statutes, consisting of sections 400.701 and 400.801, is redesignated as "INTERMEDIATE CARE FACILITIES."

Section 5. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss. 381.739-381.79, the term:

(9) "Transitional living facility" means a state-approved facility~~,~~ as defined and licensed under chapter 400 ~~or chapter 429, or a facility approved by the brain and spinal cord injury program in accordance with this chapter~~.

Section 6. Section 381.75, Florida Statutes, is amended to read:

381.75 Duties and responsibilities of the department~~, of transitional living facilities, and of residents~~.—Consistent with the mandate of s. 381.7395, the department shall develop and administer a multilevel treatment program for individuals who sustain brain or spinal cord injuries and who are referred to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who

has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain or spinal cord injuries to other state agencies to ensure ~~assure~~ that rehabilitative services, if desired, are obtained by that individual.

(3) The department, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient rehabilitation centers~~,~~ needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide transitional living services for individuals who participate in the brain and spinal cord injury program ~~the opportunity to adjust to their disabilities and to develop physical and functional skills in a supported living environment~~.

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who have brain or spinal cord injuries.~~

~~(b) The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing participants to return to community living.~~

~~(c) A transitional living facility for an individual who has a brain or spinal cord injury shall provide to such individual, in a residential setting, a goal-oriented treatment program designed to improve the individual's physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.~~

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive~~

~~treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 7. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(4) The council shall~~:~~

~~(a)~~ provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals,~~

~~administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

~~1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility~~.

~~3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.~~

~~4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.~~

~~5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.~~

Section 8. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

400.93 Licensure required; exemptions; unlawful acts;


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penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(a) Providers operated by the Department of Health or Federal Government.

(b) Nursing homes licensed under part II.

(c) Assisted living facilities licensed under chapter 429, when serving their residents.

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

(f) Intermediate care facilities and~~,~~ homes for special services~~, and transitional living facilities~~ licensed under part V.

(g) Transitional living facilities licensed under part XI.

(h) ~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i) ~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.

(j) ~~(i)~~ Licensed health care practitioners who use ~~utilize~~ home medical equipment in the course of their practice~~,~~ but do not sell or rent home medical equipment to their patients.

(k) ~~(j)~~ Pharmacies licensed under chapter 465.

Section 9. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to


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the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400.

Section 10. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

(20) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400, are exempt from s. 408.810(10).

Section 11. For the purpose of incorporating the amendment made by this act to section 381.75, Florida Statutes, in a reference thereto, subsection (1) of section 381.79, Florida Statutes, is reenacted to read:

381.79 Brain and Spinal Cord Injury Program Trust Fund.—

(1) There is created in the State Treasury the Brain and Spinal Cord Injury Program Trust Fund. Moneys in the fund shall be appropriated to the department for the purpose of providing the cost of care for brain or spinal cord injuries as a payor of last resort to residents of this state, for multilevel programs of care established pursuant to s. 381.75.

(a) Authorization of expenditures for brain or spinal cord injury care shall be made only by the department.

(b) Authorized expenditures include acute care, rehabilitation, transitional living, equipment and supplies necessary for activities of daily living, public information,

prevention, education, and research. In addition, the department may provide matching funds for public or private assistance provided under the brain and spinal cord injury program and may provide funds for any approved expansion of services for treating individuals who have sustained a brain or spinal cord injury.

Section 12. (1) A transitional living facility that is licensed under s. 400.805, Florida Statutes, on June 30, 2015, must be licensed under and in compliance with s. 400.9986, Florida Statutes, until the licensee becomes licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act. Such licensees must be licensed under and in compliance with part XI of chapter 400, Florida Statutes, as created by this act, on or before July 1, 2016.

(2) A transitional living facility that is licensed on or after July 1, 2015, must be licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act.

Section 13. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 682
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senator Grimsley
SUBJECT:	Transitional Living Facilities
DATE:	April 10, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 682 revises regulations for transitional living facilities (TLFs). The purpose of these facilities is to provide rehabilitative care in a small residential setting for persons with brain or spinal cord injuries and who need significant care and services to regain their independence. The bill provides admission criteria, client evaluations, and treatment plans. The bill establishes rights for clients in TLFs, screening requirements for facility employees, and penalties for violations.

The bill is not expected to have a fiscal impact on the Agency for Health Care Administration (AHCA) because regulation of TLFs is funded through existing fees and fines.

Except as otherwise provided, the bill is effective July 1, 2015.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue. Swelling of the spinal cord after the injury can cause further damage. After an injury, the "messages" sent between the brain and the other parts of the body no longer flow

through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which may include any combination of the following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel or bladder dysfunction.[1]

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Department of Health (DOH).[2] The program is funded through a percentage of traffic-related fines and surcharges for driving or boating under the influence of alcohol or drugs, fees on temporary license tags, and a percentage of fees from a motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. The program also employs regional managers who supervise staff in their regions and who oversee the local operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation, and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. The program expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education's Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual receiving services must be a legal Florida resident who has suffered a brain or spinal cord injury meeting the state's definition of such injuries;[3] has been referred to the BSCIP central registry; and must be medically stable. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting rather than reside in a skilled nursing facility.

Transitional Living Facilities

Transitional living facilities (TLFs) provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to persons with spinal cord or head injuries. There are currently 14 facilities located in the state.[4] Most of the facilities are small and have between five and 10 beds. One facility,

[1]Florida Spinal Cord Injury Resource Center, *Family and Survivor's Guide*, http://fscirc.com/what-is-a-sci (last visited Feb. 23, 2015).
[2] Florida Department of Health, http://www.floridahealth.gov/licensing-and-regulation/brain-and-spinal-cord-injury-program-site-survey-inspections/BSCIP%20Rules%20and%20Statutes/index.html. (Last visited Feb. 23, 2015).
[3] Section 381.745, F.S., defines "brain or spinal cord injury" as either a lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: motor deficit, sensory deficit, or bowel and bladder dysfunction; or an insult to the skull, brain, or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic motor, sensory, cognitive, or behavioral deficits.
[4] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Feb. 23, 2015).

however, is licensed for 116 beds (Florida Institute for Neurologic Rehabilitation in Wauchula). The facilities are located primarily in central Florida. The AHCA is the licensing authority and one of the regulatory authorities which oversees TLFs under part II of ch. 408, F.S., part V of ch. 400, F.S., and Rule 59A-17 of the Florida Administrative Code. The current licensure fee is $4,588 plus a $90 per-bed fee per biennium.[5]

The AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH to monitor services provided for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.[6]

Section 400.805, F.S., provides requirements for TLFs. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a facility, as well as requiring all facility personnel to submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires the AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of TLFs.[7]

The Brain and Spinal Cord Injury Advisory Council has the right to enter and inspect transitional living facilities.[8] In addition, designated representatives of the AHCA, the local fire marshal, and other agencies have access to the facilities and clients.[9]

According to a news report from Bloomberg dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida, were abused, neglected, and confined. The news report was based on information from current and former clients and their family members, criminal charging documents, civil complaints, and advocates for the disabled.[10] The employees were terminated from employment with the facility and face criminal charges for abusing clients. The AHCA most recently inspected the facility April 9, 2014, and found no deficiencies.[11]

III. Effect of Proposed Changes:

Section 1 creates and designates ss. 400.997 through 400.9985, F.S., as part XI of ch. 400, F.S., entitled "Transitional Living Facilities."

Under the newly-created s. 400.997, F.S., the bill provides legislative intent that TLFs are to assist persons with brain and spinal cord injuries to achieve independent living and return to the community.

The bill defines the terms:

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[5] The AHCA, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[6] Supra n. 5
[7] Supra n. 5
[8] Section 400.805(4), F.S.
[9] Supra n. 5
[10] David Armstrong, *Abuse of Brain Injured Americans Scandalizes U.S.*, BLOOMBERG, Jan. 7, 2012.
[11] The AHCA, *Florida Health Finder* http://www.floridahealthfinder.gov/index.html (last visited Feb. 23, 2015).

- "Chemical restraint" as a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility and which is used for client protection or safety and is not required for the treatment of medical conditions or symptoms;
- "Physical restraint" as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body which cannot easily be removed and restricts freedom of movement or normal access to one's own body; and
- "Seclusion" as the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving, while not meaning isolation due to a person's medical condition or symptoms.

The bill also moves the definition of a TLF from s. 381.475, F.S., and defines "agency" as the AHCA and "department" as the DOH.

Under the newly-created s. 400.9972, F.S., the bill provides licensure requirements and application fees for TLFs. The bill codifies the current license fee of $4,588 and the per-bed fee of $90.[12] The bill requires certain information from the licensure applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, proof of a satisfactory fire safety inspection, and documentation of a sanitation inspection by a county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. The AHCA may conduct an inspection of a facility after the facility submits proof of accreditation.

Admission Criteria

Under the newly created s. 400.9973, F.S., the bill sets standards that TLFs must meet for client admission, transfer, and discharge from the facility. The facility is required to establish admission, transfer, and discharge policies and procedures in writing.

Only clients who have a brain or spinal cord injury may be admitted to a TLF. Clients may be admitted to the facility only through a prescription by a licensed physician, physician assistant (PA), or advanced registered nurse practitioner (ARNP) and must remain under the care of a health care practitioner for the duration of the client's stay in the facility. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who are a danger to themselves or others as determined by a physician, PA, ARNP, or mental health practitioner. The facility may not admit clients requiring nursing supervision on a 24-hour basis or who are bedridden.

[12] Section 400.805(2)(b), F.S., authorizes a license fee of $4,000 and a per bed fee of $75.50. Pursuant to s. 408.805(2), F.S., The AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is $4,588 and $90 per bed and the bill uses these amounts.

A facility's nursing or medical director must complete an initial evaluation of a client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after a client's admission to the facility. An initial treatment plan must be implemented within four days of admission. A facility must also develop, and update at least monthly, a discharge plan for each client and must discharge a client who no longer requires the facility's specialized services as soon as practicable. A facility must provide at least 30 days' notice to the client before transferring or discharging him or her.

Client Plans and Evaluation

Under the newly created s. 400.9974, F.S., the bill requires that a facility must develop a comprehensive treatment plan for each client within 30 days after an initial treatment plan is developed. An interdisciplinary team, including the client, if appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- The physician's, PA's, or ARNP's orders, diagnosis, medical history, physical examinations and rehabilitation needs;
- A nursing evaluation with physician, PA, or ARNP orders for immediate care completed at admission; and
- A comprehensive assessment of the client's functional status and the services he or she needs to become independent and return to the community.

A facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Under the newly created s. 400.9975, F.S., the bill provides for certain rights of each client. Specifically, a facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors; and
- Has the opportunity to:
  - Participate in community services and activities;
  - Manage his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
  - Participate in physical exercise regularly and to be outdoors several times a week;
  - Enjoy civil and religious liberties;
  - Have adequate access to appropriate health care services; and
  - Present grievances and recommend changes in policies, procedures, and services.

A facility must:

- Promote participation of a client's representative in the process of treatment for the client;
- Answer communications from a client's family and friends promptly;
- Promote visits by individuals with a relationship to the client at any reasonable hour;
- Allow residents to leave from the facility to visit or to take trips or vacations; and
- Promptly notify client representatives of any significant incidents or changes in condition.

The bill requires a facility administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to the AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call the AHCA, the central abuse hotline, or Disabilities Rights of Florida. The facility is prohibited from taking retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Medication

Under the newly created s. 400.9976, F.S., the bill requires a TLF to record a client's medication administration, including self-administration, and each dose of medication. The medication must be administered in compliance with the physician's, PA's, or ARNP's orders. Drug administration errors and adverse drug reactions must be recorded and reported immediately to the physician, PA, or ARNP. The interdisciplinary team that develops a client's treatment plan must determine whether the client is capable of self-administration of medications.

Under the newly created s. 400.9977, F.S., unlicensed direct care services staff may assist residents with repackaged medications that are prescribed, prepackaged, and premeasured. The bill requires that the facility provide training, develop procedures, and maintain records regarding assistance with medication by unlicensed staff. Training must be conducted by a registered nurse, a licensed physician, or a licensed pharmacist. The AHCA is required to adopt rules to implement this section.

Under the newly created s. 400.9979, F.S., the bill requires that physical and chemical restraints must be ordered for clients before such restraints may be used by a facility. The bill requires that an order for restraints must be documented by a client's physician, PA, or ARNP and be consistent with the policies and procedures adopted by the facility. The client's representative or responsible party must be notified as soon as practicable after the use of restraints. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued need for the medication;
- Level of the medication in client's blood; and
- The need to adjust the prescription.

A facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Employees

Under the newly created s. 400.9978, F.S., the bill specifies that a TLF is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes a facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;

- Train employees through orientation and ongoing sessions on abuse prohibition practices;
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents, and grievances without fear of retribution;
- Identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial internal reporting and the reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under ch. 39, F.S. and ch. 415, F.S., to the appropriate licensing authorities.

Under the newly created s. 400.998, F.S., the bill requires all TLF personnel to complete a level 2 background screening and requires the facility to maintain personnel records containing the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certifications held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires a facility to:

- Implement infection control policies and procedures;
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times;
- Designate one person as administrator who is responsible for the overall management of the facility;
- Designate one person as program director who is responsible for supervising the therapeutic and behavioral staff;
- Designate in writing a person responsible for the facility when the administrator is absent for more than 24 hours;
- Designate a person to be responsible when the program director is absent;
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency; and
- Maintain written records in a form and system that complies with standard medical and business practices and which is available for submission to the AHCA upon request. The records must include:
  - A daily census;
  - A report of all accidental or unusual incidents involving clients or staff members who caused or had the potential to cause injury or harm to any person or property within the facility;
  - Agreements with third party providers;
  - Agreements with consultants employed by the facility; and
  - Documentation of each consultant's visits and required written, dated reports.

Under the newly created s. 400.9981, F.S., the bill grants clients the option of using their own personal belongings and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein does not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety

bond with the AHCA in an amount equal to twice the average monthly income of the client. If the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on the client's behalf and a copy of such statement must be given to the client and retained in the client's file and be available for inspection by the AHCA.

The bill states that a facility, upon consent of the client, shall provide for the safekeeping in the facility of personal effects not in excess of $1,000 and funds of the client not in excess of $500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to, or due to, a client, or expendable from his or her account, which is received by licensee, shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates that any person who intentionally withholds a client's property or funds; demands, beneficially receives, or contracts for payment of all or any part of a client's personal property in satisfaction of the facility rate for supplies or services; or borrows from a client's personal funds, unless agreed to by written contract, commits a misdemeanor of the first degree. The bill mandates any licensee, administrator or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power, commits a felony of the third degree.

In the event of the death of a client, a TLF must return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill authorizes the AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Under the newly created s. 400.9982, F.S., the bill authorizes the AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. The AHCA may adopt and enforce rules to implement this part and part II of ch. 408, F.S., including:

- The location of TLFs;
- The qualifications of personnel;
- The requirements for personnel procedures, reporting procedures, and documentation;
- Services provided to clients; and
- The preparation and annual update of a comprehensive emergency management plan.

Under s. 400.9983, F.S., the bill revises penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned, or widespread.[13] The penalties in the bill take into account the frequency of the problems within the facility as well. Violations are also separated into class I through class IV based on severity with class I violations being the most serious and class IV being the least serious. Class I violations put clients in imminent danger. Class II violations directly threaten the safety of clients. Class III violations indirectly threaten the safety of clients. Class IV violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.[14]

Under the bill, fines for violations will be levied at the following amounts, but fines for class III and class IV violations will not be levied if the violations are corrected within timeframes specified by the AHCA:

Class of Violation/Correction	Isolated	Patterned	Widespread
I - Regardless of correction	$5,000	$7,500	$10,000
II - Regardless of correction	$1,000	$2,500	$5,000
III - Only if uncorrected	$500	$750	$1,000
IV - Only if uncorrected	Fines for Class IV violations may range from $100 to $200.		

Under the newly created s. 400.9984, F.S., the bill authorizes the AHCA to petition a court for the appointment of a receiver for TLFs using the provisions of s. 429.22, F.S.

Under the newly created s. 400.9985, F.S., the bill requires the AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure that relevant information pertaining to the regulation of TLFs and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries.

Sections 2 and 3 transfer s. 400.805, F.S., to the newly created s. 400.9986, F.S., and provide for the repeal of s. 400.9986, F.S., on July 1, 2016.

Section 4 renames the title of part V of chapter 400 as "Intermediate Care Facilities" to remove "Transitional Living Facilities" from the title as the bill creates a new statutory part for such facilities.

Section 5 amends s. 381.745, F.S., to conform to changes in the definition of a TLF.

Section 6 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the DOH to develop rules with the AHCA for the regulation of transitional living facilities. Provisions in this statutory section are moved and revised in the newly created sections 400.997 through 400.9984, F.S.

[13] *See* s. 408.813(2), F.S.
[14] *See* s. 408.813, F.S.

Section 7 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council's appointment of a committee to regulate TLFs. These duties are duplicative of the regulation by the AHCA under the bill and are therefore removed.

Section 8 amends s. 400.93, F.S., to conform a reference to TLFs.

Section 9 amends s. 408.802, F.S., to conform a reference to TLFs.

Section 10 amends s. 408.820, F.S., to conform a reference to TLFs.

Section 11 reenacts s. 381.79, F.S., to incorporate amendments made to s. 381.75, F.S.

Section 12 creates a non-statutory section of Florida law requiring that TLFs that were licensed prior to the effective date of the bill must be licensed under the new requirements of the bill no later than July 1, 2016.

Section 13 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Transitional living facilities may incur increased costs due to the increased requirements contained in CS/SB 682.

C. Government Sector Impact:

None.[15]

[15] The Agency for Health Care Administration, *Senate Bill 682 Analysis* (Dec. 12, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.745, 381.75, 381.78, 400.93, 408.802, and 408.820.

This bill creates the following sections of the Florida Statutes: 400.997, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, 400.9984, and 400.9985.

This bill reenacts section 381.79 of the Florida Statutes.

This bill repeals section 400.805 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Appropriations on April 9, 2015:
The committee substitute includes a technical amendment to properly reenact s. 381.79, F.S., in section 11 of the bill.

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 Grimsley

21-00365B-15 2015682__

A bill to be entitled

An act relating to transitional living facilities; creating part XI of ch. 400, F.S.; creating s. 400.997, F.S.; providing legislative intent; creating s. 400.9971, F.S.; providing definitions; creating s. 400.9972, F.S.; requiring the licensure of transitional living facilities; providing license fees and application requirements; requiring accreditation of licensed facilities; creating s. 400.9973, F.S.; providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; creating s. 400.9974, F.S.; requiring a comprehensive treatment plan to be developed for each client; providing plan and staffing requirements; requiring certain consent for continued treatment in a transitional living facility; creating s. 400.9975, F.S.; providing licensee responsibilities with respect to each client and specified others and requiring written notice of such responsibilities to be provided; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or taking other retaliatory action under certain circumstances; requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures governing the release of client information; creating s. 400.9976, F.S.; providing licensee requirements relating to administration of

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medication; requiring maintenance of medication administration records; providing requirements for the self-administration of medication by clients; creating s. 400.9977, F.S.; providing training and supervision requirements for the administration of medications by unlicensed staff; specifying who may conduct the training; requiring licensees to adopt certain policies and procedures and maintain specified records with respect to the administration of medications by unlicensed staff; requiring the Agency for Health Care Administration to adopt rules; creating s. 400.9978, F.S.; providing requirements for the screening of potential employees and training and monitoring of employees for the protection of clients; requiring licensees to implement certain policies and procedures to protect clients; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; creating s. 400.9979, F.S.; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; providing a limitation on the duration of an emergency treatment order; requiring notification of certain persons when restraint or seclusion is imposed; authorizing the agency to adopt rules; creating s. 400.998, F.S.; providing background screening requirements for licensee personnel; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for

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licensees; providing recordkeeping requirements; creating s. 400.9981, F.S.; providing licensee responsibilities with respect to the property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds or other property received by a licensee and credited to the client; providing a penalty for certain misuse of a client's personal funds, property, or personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the agency to adopt rules; creating s. 400.9982, F.S.; providing legislative intent; authorizing the agency to adopt and enforce rules establishing specified standards for transitional living facilities and personnel thereof; creating s. 400.9983, F.S.; classifying certain violations and providing penalties therefor; providing administrative fines for specified classes of violations; creating s. 400.9984, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9985, F.S.; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes; transferring and renumbering s. 400.805, F.S., as s.

400.9986, F.S.; repealing s. 400.9986, F.S., relating to transitional living facilities, on a specified date; revising the title of part V of ch. 400, F.S.; amending s. 381.745, F.S.; revising the definition of the term "transitional living facility," to conform to changes made by the act; amending s. 381.75, F.S.; revising the duties of the Department of Health and the agency relating to transitional living facilities; amending ss. 381.78, 400.93, 408.802, and 408.820, F.S.; conforming provisions to changes made by the act; reenacting s. 381.79(1), F.S., to incorporate the amendment made by this act to s. 381.75, F.S., in a reference thereto; providing for the act's applicability to licensed transitional living facilities licensed on specified dates; providing effective dates.

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

Section 1. Part XI of chapter 400, Florida Statutes, consisting of sections 400.997 through 400.9986, is created to read:

PART XI

TRANSITIONAL LIVING FACILITIES

400.997 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients

in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client, consistent with optimum improvement of the client's condition. The goal of a transitional living program for persons who have brain or spinal cord injuries is to assist each person who has such an injury to achieve a higher level of independent functioning and to enable the person to reenter the community. It is also the policy of the state that the restraint or seclusion of a client is justified only as an emergency safety measure used in response to danger to the client or others. It is therefore the intent of the Legislature to achieve an ongoing reduction in the use of restraint or seclusion in programs and facilities that serve persons who have brain or spinal cord injuries.

400.9971 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives a person of movement or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

(3) "Client's representative" means the parent of a child client or the client's guardian, designated representative, designee, surrogate, or attorney in fact.

(4) "Department" means the Department of Health.

(5) "Physical restraint" means a manual method to restrict freedom of movement of or normal access to a person's body, or a physical or mechanical device, material, or equipment attached

or adjacent to the person's body that the person cannot easily remove and that restricts freedom of movement of or normal access to the person's body, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, or a Posey restraint. The term includes any device that is not specifically manufactured as a restraint but is altered, arranged, or otherwise used for this purpose. The term does not include bandage material used for the purpose of binding a wound or injury.

(6) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such prevention may be accomplished by imposition of a physical barrier or by action of a staff member to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person's medical condition or symptoms.

(7) "Transitional living facility" means a site where specialized health care services are provided to persons who have brain or spinal cord injuries, including, but not limited to, rehabilitative services, behavior modification, community reentry training, aids for independent living, and counseling.

400.9972 License required; fee; application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a transitional living facility in this state. However, this part

does not require a provider licensed by the agency to obtain a separate transitional living facility license to serve persons who have brain or spinal cord injuries as long as the services provided are within the scope of the provider's license.

(2) In accordance with this part, an applicant or a licensee shall pay a fee for each license application submitted under this part. The license fee shall consist of a $4,588 license fee and a $90 per-bed fee per biennium and shall conform to the annual adjustment authorized in s. 408.805.

(3) An applicant for licensure must provide:

(a) The location of the facility for which the license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(b) Proof of liability insurance as provided in s. 624.605(1)(b).

(c) Proof of compliance with local zoning requirements, including compliance with the requirements of chapter 419 if the proposed facility is a community residential home.

(d) Proof that the facility has received a satisfactory firesafety inspection.

(e) Documentation that the facility has received a satisfactory sanitation inspection by the county health department.

(4) The applicant's proposed facility must attain and continuously maintain accreditation by an accrediting organization that specializes in evaluating rehabilitation facilities whose standards incorporate licensure regulations comparable to those required by the state. An applicant for

licensure as a transitional living facility must acquire accreditation within 12 months after issuance of an initial license. The agency shall accept the accreditation survey report of the accrediting organization in lieu of conducting a licensure inspection if the standards included in the survey report are determined by the agency to document that the facility substantially complies with state licensure requirements. Within 10 days after receiving the accreditation survey report, the applicant shall submit to the agency a copy of the report and evidence of the accreditation decision as a result of the report. The agency may conduct an inspection of a transitional living facility to ensure compliance with the licensure requirements of this part, to validate the inspection process of the accrediting organization, to respond to licensure complaints, or to protect the public health and safety.

400.9973 Client admission, transfer, and discharge.—

(1) A transitional living facility shall have written policies and procedures governing the admission, transfer, and discharge of clients.

(2) The admission of a client to a transitional living facility must be in accordance with the licensee's policies and procedures.

(3) To be admitted to a transitional living facility, an individual must have an acquired internal or external injury to the skull, the brain, or the brain's covering, caused by a traumatic or nontraumatic event, which produces an altered state of consciousness, or a spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of at least two of the following

deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) A cognitive deficit.

(d) A behavioral deficit.

(e) Bowel and bladder dysfunction.

(4) A client whose medical condition and diagnosis do not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician, physician assistant, or advanced registered nurse practitioner and must remain under the care of a licensed physician, physician assistant, or advanced registered nurse practitioner for the duration of the client's stay in the facility.

(6) A transitional living facility may not admit a person whose primary admitting diagnosis is mental illness or an intellectual or developmental disability.

(7) A person may not be admitted to a transitional living facility if the person:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the person is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to himself or herself or others as determined by a physician, physician assistant, or advanced

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registered nurse practitioner or a mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client's admission to the facility. An initial comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) A transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be eligible for discharge. A discharge plan must be reviewed and updated as necessary but at least once monthly.

(10) A transitional living facility shall discharge a client as soon as practicable when the client no longer requires the specialized services described in s. 400.9971(7), when the client is not making measurable progress in accordance with the client's comprehensive treatment plan, or when the transitional living facility is no longer the most appropriate and least

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restrictive treatment option.

(11) A transitional living facility shall provide at least 30 days' notice to a client of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This subsection does not apply if a client voluntarily terminates residency.

400.9974 Client comprehensive treatment plans; client services.—

(1) A transitional living facility shall develop a comprehensive treatment plan for each client as soon as practicable but no later than 30 days after the initial comprehensive treatment plan is developed. The comprehensive treatment plan must be developed by an interdisciplinary team consisting of the case manager, the program director, the advanced registered nurse practitioner, and appropriate therapists. The client or, if appropriate, the client's representative must be included in developing the comprehensive treatment plan. The comprehensive treatment plan must be reviewed and updated if the client fails to meet projected improvements outlined in the plan or if a significant change in the client's condition occurs. The comprehensive treatment plan must be reviewed and updated at least once monthly.

(2) The comprehensive treatment plan must include:

(a) Orders obtained from the physician, physician assistant, or advanced registered nurse practitioner and the client's diagnosis, medical history, physical examination, and rehabilitative or restorative needs.

(b) A preliminary nursing evaluation, including orders for immediate care provided by the physician, physician assistant,

or advanced registered nurse practitioner, which shall be completed when the client is admitted.

(c) A comprehensive, accurate, reproducible, and standardized assessment of the client's functional capability; the treatments designed to achieve skills, behaviors, and other conditions necessary for the client to return to the community; and specific measurable goals.

(d) Steps necessary for the client to achieve transition into the community and estimated length of time to achieve those goals.

(3) The client or, if appropriate, the client's representative must consent to the continued treatment at the transitional living facility. Consent may be for a period of up to 6 months. If such consent is not given, the transitional living facility shall discharge the client as soon as practicable.

(4) A client must receive the professional program services needed to implement the client's comprehensive treatment plan.

(5) The licensee must employ qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of the client's comprehensive treatment plan.

(6) A client must receive a continuous treatment program that includes appropriate, consistent implementation of specialized and general training, treatment, health services, and related services and that is directed toward:

(a) The acquisition of the behaviors and skills necessary for the client to function with as much self-determination and independence as possible.

(b) The prevention or deceleration of regression or loss of current optimal functional status.

(c) The management of behavioral issues that preclude independent functioning in the community.

400.9975 Licensee responsibilities.—

(1) The licensee shall ensure that each client:

(a) Lives in a safe environment free from abuse, neglect, and exploitation.

(b) Is treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retains and uses his or her own clothes and other personal property in his or her immediate living quarters to maintain individuality and personal dignity, except when the licensee demonstrates that such retention and use would be unsafe, impractical, or an infringement upon the rights of other clients.

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visits with any person of his or her choice. Upon request, the licensee shall modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as no longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall retain the right to call the

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central abuse hotline, the agency, and Disability Rights Florida at any time.

(e) Has the opportunity to participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Has the opportunity to manage his or her financial affairs unless the client or, if applicable, the client's representative authorizes the administrator of the facility to provide safekeeping for funds as provided under this part.

(g) Has reasonable opportunity for regular exercise more than once per week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(h) Has the opportunity to exercise civil and religious liberties, including the right to independent personal decisions. However, a religious belief or practice, including attendance at religious services, may not be imposed upon any client.

(i) Has access to adequate and appropriate health care consistent with established and recognized community standards.

(j) Has the opportunity to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. A licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for investigating, tracking, managing, and responding to complaints by a client or, if applicable, the client's representative and an appeals process. The appeals process must include access to

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Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

(a) Promote participation of the client's representative in the process of providing treatment to the client unless the representative's participation is unobtainable or inappropriate.

(b) Answer communications from the client's family, guardians, and friends promptly and appropriately.

(c) Promote visits by persons with a relationship to the client at any reasonable hour, without requiring prior notice, in any area of the facility that provides direct care services to the client, consistent with the client's and other clients' privacy, unless the interdisciplinary team determines that such a visit would not be appropriate.

(d) Promote opportunities for the client to leave the facility for visits, trips, or vacations.

(e) Promptly notify the client's representative of a significant incident or change in the client's condition, including, but not limited to, serious illness, accident, abuse, unauthorized absence, or death.

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and is read or explained to clients who cannot read. This notice shall be provided to clients in a manner that is clearly legible, shall include the statewide toll-free telephone number for reporting complaints to the agency, and shall include the words: "To report a complaint regarding the services you receive,

please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]...." The statewide toll-free telephone number for the central abuse hotline shall be provided to clients in a manner that is clearly legible and shall include the words: "To report abuse, neglect, or exploitation, please call toll-free ...[telephone number]...." The licensee shall ensure a client's access to a telephone where telephone numbers are posted as required by this subsection.

(4) A licensee or employee of a facility may not serve notice upon a client to leave the premises or take any other retaliatory action against another person solely because of the following:

(a) The client or other person files an internal or external complaint or grievance regarding the facility.

(b) The client or other person appears as a witness in a hearing inside or outside the facility.

(5) Before or at the time of admission, the client and, if applicable, the client's representative shall receive a copy of the licensee's responsibilities, including grievance procedures and telephone numbers, as provided in this section.

(6) The licensee must develop and implement policies and procedures governing the release of client information, including consent necessary from the client or, if applicable, the client's representative.

400.9976 Administration of medication.—

(1) An individual medication administration record must be maintained for each client. A dose of medication, including a self-administered dose, shall be properly recorded in the client's record. A client who self-administers medication shall

be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time that medication is placed into each client's pill organizer. All medications must be administered in compliance with orders of a physician, physician assistant, or advanced registered nurse practitioner.

(2) If an interdisciplinary team determines that self-administration of medication is an appropriate objective, and if the physician, physician assistant, or advanced registered nurse practitioner does not specify otherwise, the client must be instructed by the physician, physician assistant, or advanced registered nurse practitioner to self-administer his or her medication without the assistance of a staff person. All forms of self-administration of medication, including administration orally, by injection, and by suppository, shall be included in the training. The client's physician, physician assistant, or advanced registered nurse practitioner must be informed of the interdisciplinary team's decision that self-administration of medication is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact the appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician, physician assistant, or advanced registered nurse practitioner.

400.9977 Assistance with medication.—

(1) Notwithstanding any provision of part I of chapter

464, the Nurse Practice Act, unlicensed direct care services staff who provide services to clients in a facility licensed under this part may administer prescribed, prepackaged, and premeasured medications after the completion of training in medication administration and under the general supervision of a registered nurse as provided under this section and applicable rules.

(2) Training required by this section and applicable rules shall be conducted by a registered nurse licensed under chapter 464, a physician licensed under chapter 458 or chapter 459, or a pharmacist licensed under chapter 465.

(3) A facility that allows unlicensed direct care service staff to administer medications pursuant to this section shall:

(a) Develop and implement policies and procedures that include a plan to ensure the safe handling, storage, and administration of prescription medications.

(b) Maintain written evidence of the expressed and informed consent for each client.

(c) Maintain a copy of the written prescription, including the name of the medication, the dosage, and the administration schedule and termination date.

(d) Maintain documentation of compliance with required training.

(4) The agency shall adopt rules to implement this section.

400.9978 Protection of clients from abuse, neglect, mistreatment, and exploitation.—The licensee shall develop and implement policies and procedures for the screening and training of employees; the protection of clients; and the prevention, identification, investigation, and reporting of abuse, neglect,

mistreatment, and exploitation. The licensee shall identify clients whose personal histories render them at risk for abusing other clients, develop intervention strategies to prevent occurrences of abuse, monitor clients for changes that would trigger abusive behavior, and reassess the interventions on a regular basis. A licensee shall:

(1) Screen each potential employee for a history of abuse, neglect, mistreatment, or exploitation of clients. The screening shall include an attempt to obtain information from previous and current employers and verification of screening information by the appropriate licensing boards.

(2) Train employees through orientation and ongoing sessions regarding issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation; appropriate interventions to address aggressive or catastrophic reactions of clients; the process for reporting allegations without fear of reprisal; and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information regarding how and to whom they may report concerns, incidents, and grievances without fear of retribution and provide feedback regarding the concerns that are expressed. A licensee shall identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients and ensuring that the assigned staff have knowledge of each client's care needs.

(c) Identifying inappropriate staff behaviors, such as using derogatory language, rough handling of clients, ignoring clients while giving care, and directing clients who need toileting assistance to urinate or defecate in their beds.

(d) Assessing, monitoring, and planning care for clients with needs and behaviors that might lead to conflict or neglect, such as a history of aggressive behaviors including entering other clients' rooms without permission, exhibiting self-injurious behaviors or communication disorders, requiring intensive nursing care, or being totally dependent on staff.

(4) Identify events, such as suspicious bruising of clients, occurrences, patterns, and trends that may constitute abuse and determine the direction of the investigation.

(5) Investigate alleged violations and different types of incidents, identify the staff member responsible for initial reporting, and report results to the proper authorities. The licensee shall analyze the incidents to determine whether policies and procedures need to be changed to prevent further incidents and take necessary corrective actions.

(6) Protect clients from harm during an investigation.

(7) Report alleged violations and substantiated incidents, as required under chapters 39 and 415, to the licensing authorities and all other agencies, as required, and report any knowledge of actions by a court of law that would indicate an employee is unfit for service.

400.9979 Restraint and seclusion; client safety.—

(1) A facility shall provide a therapeutic milieu that supports a culture of individual empowerment and responsibility. The health and safety of the client shall be the facility's primary concern at all times.

(2) The use of physical restraints must be ordered and documented by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the policies and procedures adopted by the facility. The client or, if applicable, the client's representative shall be informed of the facility's physical restraint policies and procedures when the client is admitted.

(3) The use of chemical restraints shall be limited to prescribed dosages of medications as ordered by a physician, physician assistant, or advanced registered nurse practitioner and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative shall be informed of the facility's chemical restraint policies and procedures when the client is admitted.

(4) Based on the assessment by a physician, physician assistant, or advanced registered nurse practitioner, if a client exhibits symptoms that present an immediate risk of injury or death to himself or herself or others, a physician, physician assistant, or advanced registered nurse practitioner may issue an emergency treatment order to immediately administer rapid-response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is not effective for more

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than 24 hours.

(b) Whenever a client is medicated under this subsection, the client's representative or a responsible party and the client's physician, physician assistant, or advanced registered nurse practitioner shall be notified as soon as practicable.

(5) A client who is prescribed and receives a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her physician, physician assistant, or advanced registered nurse practitioner at least monthly to assess:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood.

(c) The need for adjustments to the prescription.

(6) The licensee shall ensure that clients are free from unnecessary drugs and physical restraints and are provided treatment to reduce dependency on drugs and physical restraints.

(7) The licensee may only employ physical restraints and seclusion as authorized by the facility's written policies, which shall comply with this section and applicable rules.

(8) Interventions to manage dangerous client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare, and civil and human rights of a client are adequately protected.

(9) A facility shall notify the parent, guardian, or, if applicable, the client's representative when restraint or seclusion is employed. The facility must provide the notification within 24 hours after the restraint or seclusion is employed. Reasonable efforts must be taken to notify the parent, guardian, or, if applicable, the client's representative by

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telephone or e-mail, or both, and these efforts must be documented.

(10) The agency may adopt rules that establish standards and procedures for the use of restraints, restraint positioning, seclusion, and emergency treatment orders for psychotropic medications, restraint, and seclusion. If rules are adopted, the rules must include duration of restraint, staff training, observation of the client during restraint, and documentation and reporting standards.

400.998 Personnel background screening; administration and management procedures.—

(1) The agency shall require level 2 background screening for licensee personnel as required in s. 408.809(1)(e) and pursuant to chapter 435 and s. 408.809.

(2) The licensee shall maintain personnel records for each staff member that contain, at a minimum, documentation of background screening, a job description, documentation of compliance with the training requirements of this part and applicable rules, the employment application, references, a copy of each job performance evaluation, and, for each staff member who performs services for which licensure or certification is required, a copy of all licenses or certification held by that staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include the policies and procedures in the licensee’s policy manual.

(b) Maintain liability insurance as defined in s. 624.605(1)(b).

(c) Designate one person as an administrator to be responsible and accountable for the overall management of the facility.

(d) Designate in writing a person to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director to be responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency management plan, pursuant to s. 400.9982(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations shall also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days after receipt of the plan and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that comply with medical and business practices and make the records available by the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of each accident or unusual incident involving a client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. The record shall contain a clear description of each accident or incident; the names of the persons involved; a description of medical or other services provided to these persons, including the provider of the services; and the steps taken to prevent recurrence of such accident or incident.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of a consultant's visits and required written and dated reports.

400.9981 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing a roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her presence therein does not confer on a licensee or administrator, or an employee or representative thereof, any authority to manage, use, or dispose of the property of the client, and the admission or presence of a client does not confer on such person any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

(3) A licensee or administrator, or an employee or representative thereof, may:

(a) Not act as the guardian, trustee, or conservator for a client or a client's property.

(b) Act as a competent client's payee for social security, veteran's, or railroad benefits if the client provides consent and the licensee files a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that are received by a licensee.

(c) Act as the attorney in fact for a client if the licensee files a surety bond with the agency in an amount equal to twice the average monthly income of the client, plus the value of a client's property under the control of the attorney in fact.

The surety bond required under paragraph (b) or paragraph (c) shall be executed by the licensee as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the licensee with the requirements of licensure and is payable to the agency for the benefit of a client who suffers a financial loss as a result of the misuse or misappropriation of funds held pursuant to this subsection. A surety company that cancels or does not renew the bond of a licensee shall notify the agency in writing at least 30 days before the action, giving the reason for cancellation or nonrenewal. A licensee or administrator, or an employee or representative thereof, who is granted power of attorney for a client of the facility shall, on a monthly basis, notify the

client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of the notification given to the client shall be retained in the client's file and available for agency inspection.

(4) A licensee, with the consent of the client, shall provide for safekeeping in the facility of the client's personal effects of a value not in excess of $1,000 and the client's funds not in excess of $500 cash and shall keep complete and accurate records of the funds and personal effects received. If a client is absent from a facility for 24 hours or more, the licensee may provide for safekeeping of the client's personal effects of a value in excess of $1,000.

(5) Funds or other property belonging to or due to a client or expendable for the client's account that are received by a licensee shall be regarded as funds held in trust and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. The funds held in trust shall be used or otherwise expended only for the account of the client. At least once every month, except pursuant to an order of a court of competent jurisdiction, the licensee shall furnish the client and, if applicable, the client's representative with a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. The licensee shall furnish the statement annually and upon discharge or transfer of a client. A governmental agency or private charitable agency contributing funds or other property to the account of a client is also entitled to receive a statement monthly and upon the discharge

or transfer of the client.

(6)(a) In addition to any damages or civil penalties to which a person is subject, a person who:

1. Intentionally withholds a client's personal funds, personal property, or personal needs allowance;

2. Demands, beneficially receives, or contracts for payment of all or any part of a client's personal property or personal needs allowance in satisfaction of the facility rate for supplies and services; or

3. Borrows from or pledges any personal funds of a client, other than the amount agreed to by written contract under s. 429.24,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A licensee or administrator, or an employee, or representative thereof, who is granted power of attorney for a client and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) In the event of the death of a client, a licensee shall return all refunds, funds, and property held in trust to the client's personal representative, if one has been appointed at the time the licensee disburses such funds, or, if not, to the client's spouse or adult next of kin named in a beneficiary designation form provided by the licensee to the client. If the client does not have a spouse or adult next of kin or such person cannot be located, funds due to be returned to the client shall be placed in an interest-bearing account, and all property

held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. The funds shall be kept separate from the funds and property of the licensee and other clients of the facility. If the funds of the deceased client are not disbursed pursuant to the Florida Probate Code within 2 years after the client's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.

(8) The agency, by rule, may clarify terms and specify procedures and documentation necessary to administer the provisions of this section relating to the proper management of clients' funds and personal property and the execution of surety bonds.

400.9982 Rules establishing standards.—

(1) It is the intent of the Legislature that rules adopted and enforced pursuant to this part and part II of chapter 408 include criteria to ensure reasonable and consistent quality of care and client safety. The rules should make reasonable efforts to accommodate the needs and preferences of the client to enhance the client's quality of life while residing in a transitional living facility.

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which may include reasonable and fair criteria with respect to:

(a) The location of transitional living facilities.

(b) The qualifications of personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support staff, who are responsible for client care. The licensee must employ enough qualified professional

staff to carry out and monitor interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

400.9983 Violations; penalties.—A violation of this part or any rule adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as follows:

(1) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of $5,000 for an isolated violation, $7,500 for a patterned violation, or $10,000 for a widespread violation. Violations may be identified, and a fine must be levied, notwithstanding the correction of the deficiency

giving rise to the violation.

(2) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of $1,000 for an isolated violation, $2,500 for a patterned violation, or $5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(3) Class "III" violations are defined in s. 408.813. The agency shall impose an administrative fine of $500 for an isolated violation, $750 for a patterned violation, or $1,000 for a widespread violation. If a deficiency giving rise to a class III violation is corrected within the time specified by the agency, the fine may not be imposed.

(4) Class "IV" violations are defined in s. 408.813. The agency shall impose for a cited class IV violation an administrative fine of at least $100 but not exceeding $200 for each violation. If a deficiency giving rise to a class IV violation is corrected within the time specified by the agency, the fine may not be imposed.

400.9984 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

400.9985 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of

information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 2. Section 400.805, Florida Statutes, is transferred and renumbered as s. 400.9986, Florida Statutes.

Section 3. Effective July 1, 2016, s. 400.9986, Florida Statutes, is repealed.

Section 4. The title of part V of chapter 400, Florida Statutes, consisting of sections 400.701 and 400.801, is redesignated as "INTERMEDIATE CARE FACILITIES."

Section 5. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss. 381.739-381.79, the term:

(9) "Transitional living facility" means a state-approved facility~~,~~ as defined and licensed under chapter 400 ~~or chapter 429, or a facility approved by the brain and spinal cord injury program in accordance with this chapter~~.

Section 6. Section 381.75, Florida Statutes, is amended to read:

381.75 Duties and responsibilities of the department~~, of transitional living facilities, and of residents~~.—Consistent with the mandate of s. 381.7395, the department shall develop and administer a multilevel treatment program for individuals who sustain brain or spinal cord injuries and who are referred to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the

services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain or spinal cord injuries to other state agencies to ensure ~~assure~~ that rehabilitative services, if desired, are obtained by that individual.

(3) The department, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient rehabilitation centers~~,~~ needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide transitional living services for individuals who participate in the brain and spinal cord injury program ~~the opportunity to adjust to their disabilities and to develop physical and functional skills in a supported living environment~~.

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who~~

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~~have brain or spinal cord injuries.~~

~~(b) The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing participants to return to community living.~~

~~(c) A transitional living facility for an individual who has a brain or spinal cord injury shall provide to such individual, in a residential setting, a goal-oriented treatment program designed to improve the individual's physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.~~

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to~~

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~~require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 7. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(4) The council shall~~:~~

~~(a)~~ provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

~~1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility~~.

~~3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.~~

~~4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.~~

~~5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.~~

Section 8. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company,

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corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(a) Providers operated by the Department of Health or Federal Government.

(b) Nursing homes licensed under part II.

(c) Assisted living facilities licensed under chapter 429, when serving their residents.

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

(f) Intermediate care facilities and~~,~~ homes for special services~~, and transitional living facilities~~ licensed under part V.

(g) Transitional living facilities licensed under part XI.

(h)~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i)~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.

(j)~~(i)~~ Licensed health care practitioners who use ~~utilize~~ home medical equipment in the course of their practice~~,~~ but do not sell or rent home medical equipment to their patients.

(k)~~(j)~~ Pharmacies licensed under chapter 465.

Section 9. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390,

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394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400.

Section 10. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing statutes, the following exemptions shall apply to specified requirements of this part:

(20) Transitional living facilities, as provided under part XI ~~V~~ of chapter 400, are exempt from s. 408.810(10).

Section 11. Subsection (1) of s. 381.79 is reenacted for the purpose of incorporating the amendment made by this act to s. 381.75, Florida Statutes, in a reference thereto.

Section 12. (1) A transitional living facility that is licensed under s. 400.805, Florida Statutes, on June 30, 2015, must be licensed under and in compliance with s. 400.9986, Florida Statutes, until the licensee becomes licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act. Such licensees must be licensed under and in compliance with part XI of chapter 400, Florida Statutes, as created by this act, on or before July 1, 2016.

(2) A transitional living facility that is licensed on or after July 1, 2015, must be licensed under and in compliance with part XI of ch. 400, Florida Statutes, as created by this act.

Section 13. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2015.

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

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 24, 2015

I respectfully request that **Senate Bill #682**, relating to Transitional Living Facilities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

SENATE APPROPRIATIONS
RECEIVED
15 MAR 25 PM 3:15
CHAIRMAN
STAFF DIR. STAFF

File signed original with committee office

S-020 (03/2004)

The Florida Senate

Committee Agenda Request

SENATE APPROPRIATIONS
RECEIVED
15 APR -1 PM 6:38
CHAIRMAN
STAFF DIR. STAFF

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #340**, relating to Crisis Stabilization Services, **Senate Bill #420**, relating to Animal Control, and **Senate Bill #682**, relating to Transitional Living Facilities be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

682
Bill Number (if applicable)

Topic Transitional Living Facilities

Amendment Barcode (if applicable)

Name Sylvia Smith

Job Title Director of Public Policy

Address 2473 Cave Dr. Apt
Street

Tall FL 32308
City *State* *Zip*

Phone 850 322 2258

Email Sylvias@disabilityrightsflorida.org

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

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

Representing Disability Rights 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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 686
INTRODUCER:	Finance and Tax Committee and Senator Lee
SUBJECT:	Military Housing Ad Valorem Tax Exemptions
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	**Favorable**
2.	Babin	Diez-Arguelles	FT	**Fav/CS**
3.	Babin	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 686 provides that property of the United States that is currently exempt from taxation includes leasehold interests of and improvements affixed to land if the leasehold interest and improvements are used pursuant to the Military Housing Privatization Initiative of 1996. The bill exempts the actual housing units and directly-related facilities, such as housing maintenance facilities, housing management offices, parks and recreational facilities. The bill provides that it does not apply to public lodging establishments and does not affect existing agreements for municipalities or counties to provide municipal services.

The Revenue Estimating Conference has determined that the bill has an indeterminate or zero fiscal impact on local government revenues.

The bill is effective July 1, 2015, and applies retroactively to January 1, 2007.

II. Present Situation:

Military Housing Privatization Initiative

The Military Housing Privatization Initiative (MHPI) was enacted as part of the National Defense Authorization Act for fiscal year 1996 in an effort to address the poor condition of Department of Defense (DoD) owned housing and the shortage of affordable private sector

housing for military families.[1] At the beginning of the program, the DoD owned approximately 257,000 family housing units worldwide both on and off-base with over 50 percent of the units deemed in need of renovation or replacement.[2] Under the MHPI program, the DoD works with the private sector to revitalize military family housing by employing a variety of financial tools including: direct loans, loan guarantees, equity investments, and conveyance or leasing of property or facilities.[3]

In standard MHPI projects, a branch of the United States Armed Forces enters into a long term (fifty years) ground lease of the land under the housing areas with a private developer. Title to the housing units is conveyed to the developer by quitclaim deed. Within a time schedule set by contract, the developer rehabilitates or constructs a target level of housing units and is responsible for the leasing, management and maintenance of the units. At the end of the long-term lease, the federal government may negotiate an extension of the lease or elect to acquire the improvements from the developer or its successor at no charge.

There are currently MHPI developments at the following military installations in Florida:

- Tyndall Air Force Base.
- MacDill Air Force Base.
- Patrick Air Force Base.
- Eglin Air Force Base.
- Hurlburt Field.
- Naval Air Station Jacksonville.
- Naval Air Station Key West.
- Naval Air Station Pensacola.
- Naval Air Station Whiting Field.
- Naval Station Mayport.
- Naval Support Activity Panama City.[4]

Property Valuation in Florida

Article VII, s. 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Article VII, ss. 3, 4, and 6 of the Florida Constitution, provide for specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5] Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[6]

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[1] National Defense Authorization Act for Fiscal Year 1996, Pub. Law No. 104-106, §§ 2801-2841 104th Cong. (Feb. 10, 1996).
[2] The Office of the Deputy Under Secretary of Defense Installations and Environment, *Military Housing Privatization*, *available at* http://www.acq.osd.mil/housing/overview.htm (last visited Apr. 4, 2015).
[3] *Id.*
[4] The Office of the Deputy Under Secretary of Defense Installations and Environment, *Military Housing Privatization*, *available at* http://www.acq.osd.mil/housing/state_fl.htm (last visited Apr 4, 2015).
[5] *See* s. 196.031, F.S.
[6] FLA. CONST. art. VII, ss. 3 and 6.

Government Property Exemption in Florida

Florida law generally exempts government property from ad valorem taxation.[7] Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation.

Taxation of Federal Property

Generally, property owned by the federal government is immune from state and local taxation.[8] The federal government's immunity from taxation extends to its agents and its instrumentalities.[9] Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.[10]

Congress has waived the federal immunity from ad valorem taxation for certain federal property that is leased to private parties.[11] However, this waiver of immunity is expressly made inapplicable to MHPI property.[12]

Current Litigation

Until recently, all of the MHPI projects in Florida were treated as immune from ad valorem taxes. Beginning in 2012, some property appraisers began treating the property as taxable under the theory that the property was no longer owned by the federal government. Current litigation involves the projects at Naval Air Station Key West, Naval Air Station Pensacola, Naval Air Station Whiting Field, Eglin Air Force Base and Hurlburt Field.

A trial court and an appellate court have ruled on the case involving Naval Air Station Key West. Both decisions conclude that the MHPI property is immune because the federal government is still the equitable owner of the property.[13] Additionally, the trial court determined that such improvements are exempt even if the property is not immune because the use and ownership of the improvements remain consistent with the property tax exemptions provided in s. 196.199, F.S.[14]

Similar lawsuits have recently been filed in three other counties in Florida. In 2013, the Escambia County property appraiser denied the ad valorem tax exemption for the MHPI project at Naval Air Station Pensacola that had been in effect from 2008 through 2012. The MHPI developer filed a lawsuit in July 2014 contesting Escambia County property appraiser's removal and denial of the exemption.[15]

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[7] *See* s. 196.199, F.S.
[8] *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).
[9] *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110 (1954).
[10] *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).
[11] Title 10 U.S.C s. 2667.
[12] Title 10 U.S.C. s. 2878(e)(1).
[13] *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014); *Russell v. Southeast Housing, LLC*, No. 3D14-746 (Fla. 3rd DCA 2015). The 3rd DCA decision is not final pending disposition of a timely filed motion for rehearing.
[14] *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014).
[15] *See Southeast Housing LLC v. Jones*, No. 2014-CA-000293 (Fla. 1st Cir. Ct., July 2014).

In December 2014, the developer of the MHPI project at Naval Air Station Whiting Field filed a lawsuit contesting the Santa Rosa County property appraiser's removal and denial of ad valorem exemption. The lawsuit follows the property appraiser's termination of a Payment in Lieu of Taxes agreement that was agreed upon in 2009 by the property appraiser and the developer.[16]

Also in December 2014, the developer of the MHPI project at Eglin Air Force Base and Hurlburt Field filed a lawsuit contesting the Okaloosa County property appraiser's denial of the developer's initial application for ad valorem exemption in June 2014.[17]

Agreements for Municipal Services

Counties and municipalities are authorized to provide services within their boundaries.[18] Counties and municipalities often enter into agreements to provide municipal services to property owned by the United States.[19]

III. Effect of Proposed Changes:

The bill amends s. 196.199, F.S., to provide that property of the United States that is exempt from taxation includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are used pursuant to the Military Housing Privatization Initiative of 1996.

The term "improvements" includes actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest or improvement is to be construed as owned by the United States, regardless of whether title is held by the United States, and the ad valorem exemption requires neither an exemption application, nor approval from the property appraiser.

The bill does not apply to transient public lodging establishments and does not affect existing agreements for municipalities and counties to provide municipal services.

The bill provides an effective date of July 1, 2015, and applies retroactively to January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may reduce the ability of counties and municipalities to raise revenues in the aggregate. If the property in Florida used pursuant to the MHPI is immune, the Revenue Estimating Conference (REC) has determined that the bill has a zero impact. If the property is not immune, the REC has determined that the bill has an indeterminate

[16] *See Southeast Housing, LLC, v. Brown*, No. 2014-CA-1174 (Fla. 1st Cir. Ct., December 2014).
[17] *See Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F (Fla. 1st Cir. Ct. December 2014).
[18] FLA. CONST. art VIII, s. 2(b) and s. 125.01, F.S.
[19] *See* FLA. CONST. art. VIII, s. 4 and s. 125.0101, F.S.

negative impact, and thus, the bill may implicate the mandates provisions of Art. VII, s. 18 of the Florida Constitution if the negative indeterminate impact is significant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC has determined that CS/SB 686 will have a zero or negative indeterminate fiscal impact.[20]

B. Private Sector Impact:

The bill will ensure that the property of private entities operating pursuant to the MHPI will continue to be exempt from ad valorem taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.199 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.)

CS by Finance and Tax on March 23, 2015:
The CS provides that the bill does not affect existing agreements for municipalities or counties to provide municipal services.

[20] Revenue Estimating Conference, *Military Housing Ad Valorem Tax HB361* (Feb. 04, 2015) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page110-112.pdf.

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 Finance and Tax; and Senator Lee

593-02773-15 2015686c1

A bill to be entitled

An act relating to military housing ad valorem tax exemptions; amending s. 196.199, F.S.; providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption; providing nonapplicability of provisions to transient public lodging establishments; providing that existing agreements to provide municipal services by municipalities or counties are not affected; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 196.199, Florida Statutes, is amended, to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a)1. All property of the United States is ~~shall be~~ exempt from ad valorem taxation, except such property as is subject to

593-02773-15 2015686c1

tax by this state or any political subdivision thereof or any municipality under any law of the United States.

2. Notwithstanding any other provision of law, for purposes of the exemption from ad valorem taxation provided in subparagraph 1., property of the United States includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As used in this subparagraph, the term "improvements" includes actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest and improvements described in this subparagraph, regardless of whether title is held by the United States, shall be construed as being owned by the United States, the applicable branch of the United States Armed Forces, or the applicable agency or quasi-governmental agency of the United States and are exempt from ad valorem taxation without the necessity of an application for exemption being filed or approved by the property appraiser. This subparagraph does not apply to a transient public lodging establishment as defined in s. 509.013 and does not affect any existing agreements to provide municipal services by municipalities or counties.

Section 2. This act applies retroactively to January 1, 2007.

Section 3. This act shall take effect July 1, 2015.

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)

4/9/2015
Meeting Date

Topic _____ Bill Number 686 *(if applicable)*

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
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SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 728
INTRODUCER:	Senator Benacquisto
SUBJECT:	Health Insurance Coverage for Opioids
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Lloyd	Stovall	HP	**Favorable**
3.	McSwain	Kynoch	AP	**Favorable**

I. Summary:

SB 728 allows a health insurance policy providing coverage for opioid analgesic drug products to impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients, thereby reducing the potential for abuse, diversion, and misuse of the drug.

The bill's fiscal impact is indeterminate.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

The abuse of prescription drugs in the United States has been described as an epidemic. Every day in the United States, 120 people die because of drug overdose, and another 6,748 are treated in emergency rooms for the misuse or abuse of drugs.[1] In 2010, 16,651 people in the United States died from a drug overdose involving opioid analgesics, such as oxycodone, hydrocodone, and methadone.

[1] Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Factsheet* (updated March 2, 2015) http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html (accessed March 7, 2015).

Prescription opioid[2] analgesics are a critical component of pain management particularly for treating acute and chronic medical pain, providing humane hospice care for cancer patients, and treating patients in drug treatment programs. When used properly, opioid analgesic drugs provide significant benefits for patients. However, abuse and misuse of these products has created a serious and growing public health problem. In the United States, approximately 4.5 million[3] individuals use prescription pain medications for nonmedical purposes,[4] resulting in more than 16,000 deaths[5] annually. Recent studies indicate that pharmaceuticals, especially opioid analgesics have driven the increase in drug overdose deaths.[6] In 2007, the total U.S. societal costs of prescription opioid abuse[7] was estimated at $55.7 billion.[8]

Food and Drug Administration Guidance on Abuse-Deterrent Opioids

To reduce the misuse and abuse of prescription drugs, the Food and Drug Administration released draft guidance[9] to assist the pharmaceutical industry in developing new formulations of opioid drugs with abuse-deterrent properties. The goal of abuse-deterrence products is to limit access or attractiveness of the highly desired active ingredient for abusers while assuring the safe and effective release of the medication for patients. The document provides guidance about the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties, how the studies will be evaluated, and what labeling clams may be approved based on the results of the studies.

According to the guidance, opioid analgesics can be abused in a number of ways. For example, they can be swallowed whole, crushed and swallowed, crushed and snorted, crushed and smoked, or crushed, dissolved and injected. Abuse-deterrent formulations should target known or expected routes of abuse for the opioid drug substance for that formulation. As a general framework, the FDA guidance provides that abuse-deterrent formulations are categorized in one of the following groups:

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[2] Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine (e.g., Kadian, Avinza), codeine, and related drugs. Hydrocodone products are the most commonly prescribed for a variety of painful conditions, including dental and injury-related pain. Morphine is often used before and after surgical procedures to alleviate severe pain. Codeine, on the other hand, is often prescribed for mild pain. See National Institute on Drug Abuse at http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/what-are-opioids (accessed March 7, 2015).

[3] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, The NSDUH Report, *Substance and Use and Mental Health Estimates from the 2013 National Survey on Drug Use and Health: Overview of Findings* (September 4, 2014), *available at* http://www.samhsa.gov/data/sites/default/files/NSDUH-SR200-RecoveryMonth-2014/NSDUH-SR200-RecoveryMonth-2014.htm (accessed February 20, 2015).

[4] Nonmedical use is defined as the use of prescription-type drugs that were not prescribed for the respondent or use only for the experience or feeling they caused. Nonmedical use of any prescription type drug does not include over-the-counter drugs.

[5] Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Factsheet* (updated March 2, 2015) *available at* http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html .

[6] Christopher Jones, et al., Pharmaceutical Overdose, United States, 2010, *Journal of American Medical Association*. 2013;309:657.

[7] Birnbaum, H.G., et al., Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States. Pain *Medicine*. 12:657-667.

[8] The breakout of this estimate is workplace costs $25.6 billion (46 percent), health care costs $25 billion (45 percent), and criminal justice costs $5.1 billion (9 percent). (USD in 2009).

[9] U.S. Food and Drug Administration, Draft Guidance for Industry, *Abuse-Deterrent Opioids-Evaluation and Labeling*, (January 2013) *available at* http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm334807.htm

- *Physical/Chemical barriers* – Physical barriers can prevent chewing, crushing, cutting, grating, or grinding. Chemical barriers can resist extraction of the opioid using common solvents like water, alcohol, or other organic solvents. Physical and chemical barriers can change the physical form of an oral drug rendering it less amenable to abuse.
- *Agonist/Antagonist combinations* – An opioid antagonist can be added to interfere with, reduce, or defeat the euphoria associated with abuse. The antagonist can be sequestered and released only upon manipulation of the product. For example, a drug product may be formulated such that the substance that acts as an antagonist is not clinically active when the product is swallowed but becomes active if the product is crushed and injected or snorted.
- *Aversion* – Substances can be combined to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or a higher dosage than directed is used.
- *Delivery System* (including depot injectable formulations and implants) – Certain drug release designs or the method of drug delivery can offer resistance to abuse. For example, a sustained-release depot injectable formulation that is administered intramuscularly or a subcutaneous implant can be more difficult to manipulate.
- *Prodrug* – A prodrug that lacks opioid activity until transformed in the gastrointestinal tract can be unattractive for intravenous injection or intranasal routes of abuse.
- *Combination* – Two or more of the above methods can be combined to deter abuse.

The guidance provides that it is critical that labeling claims regarding abuse-deterrent properties be based on robust, compelling, and accurate data and analysis, and that any characterization of a product's abuse-deterrent properties or potential to reduce abuse be clearly and fairly communicated. Labeling language regarding abuse deterrence should describe the product's specific abuse-deterrent properties as well as the specific routes of abuse that the product has been developed to deter. The FDA provides that there are four general tiers of label claims available to describe the potential abuse-deterrent properties of a product:

- Tier 1: Product is formulated with physiochemical barriers to abuse.
- Tier 2: Product is expected to reduce or block effect of the opioid when it is manipulated.
- Tier 3: Product is expected to reduce abuse.
- Tier 4: Product has demonstrated reduced abuse in the community.

The FDA has approved four extended release opioids with abuse deterrent labels, indicating that they are expected to result in meaningful reductions in abuse.[10] There are approximately twelve products in development.

The increasing use of abuse-deterrent opioids is expected to reduce overall medical costs. One study[11] estimated the potential cost savings from introducing abuse-deterrent opioids may be in the range of $0.6 billion to 1.6 billion per year in the United States. The study notes that cost data was extrapolated from claims data of privately-insured national employers. The study also states that privately insured population accounts for approximately 60 percent of the U.S. population, and the costs and abuse patterns for Medicaid, uninsured individuals, and small employers could be different.

[10] These include: Reformulated OxyContin, Embeda, Hysingla, and Targiniq.

[11] Birnbaum HG, White, AG, et al. Development of a Budget-Impact Model to Quantify Potential Cost Savings from Prescription Opioids Designed to Deter Abuse or Ease of Extraction. Appl Health Econ Health Policy. 2009; 7(1); 61-70.

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[12] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.[13]

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to first try a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period of time.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under the plan. A preferred drug list (PDL) is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required. Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

In some cases, plans require an insured to try one drug first to treat his or her medical condition before they will cover another drug for that condition. For example, if Drug A and Drug B both treat a medical condition, a plan may require doctors to prescribe Drug A first. If Drug A does not work for a beneficiary, then the plan will cover Drug B. Advocates of step therapy state that a step therapy approach requires the use of a clinically recognized first-line drug before approval of a more complex and often more expensive medication where the safety, effectiveness, and values has been well established before a second-line drug is authorized.

According to a published report by researchers affiliated with the National Institutes of Health, there is mixed evidence on the impact of step therapy policies.[14] A review of the literature by Brenda Motheral found that there is little good empirical evidence,[15] but other studies[16] suggest that step therapy policies have been effective at reducing drug costs without increasing the use of other medical services. However, some studies have found that the policies can increase total utilization costs over the long run because of increased inpatient admissions and emergency department visits.[17] One-step therapy policy for a typical antipsychotic medication in a Medicaid

[12] Section 20.121(3)(a)1., F.S.
[13] Section 641.21(1), F.S.
[14] Rahul K. Nayak and Steven D. Pearson, The Ethics Of "Fail First": Guidelines and Practical Scenarios for Step Therapy Coverage Policies, *Health Affairs,* Vol. 33, No.10, October 2014, pgs. 1779-1785.
[15] Brenda R. Motheral, RPh, MBA, PhD, Pharmaceutical Step Therapy Interventions: A Critical Review of the Literature, *Journal of Managed Care Pharmacy,* Vol. 17, No. 2, March 2011, pgs. 143-155.
[16] See fn. 11 at pg. 1780.
[17] See *id*.

program was associated with a higher rate of discontinuity in medication use, an outcome that was linked to increased risk for hospitalization.[18]

III. Effect of Proposed Changes:

Section 1 creates s. 627.64194, F.S., which provides requirements for opioid analgesic drug coverage. The terms "abuse-deterrent opioid analgesic drug product" and "opioid analgesic drug product" are defined. An "abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse. The term, "opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

The bill allows a health insurance policy that provides coverage for opioid analgesic drug products to impose a prior authorization for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a health insurance policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients thereby reducing the potential for abuse and misuse of the drug.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[18] See *id*.

B. Private Sector Impact:

The fiscal impact of SB 728 on the private sector is indeterminate. The bill will provide patients with greater access to abuse-deterrent opioid analgesic drug products, which is expected to reduce opioid drug misuse, abuse, and diversion. The increased use of abuse deterrent drugs is expected to reduce emergency room and drug treatment costs associated with the misuse or abuse of opioids without such abuse deterrent formulations.

C. Government Sector Impact:

The fiscal impact of the bill on the government sector is also indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.64194 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.

By Senator Benacquisto

30-00639C-15 2015728__

A bill to be entitled

An act relating to health insurance coverage for opioids; creating s. 627.64194, F.S.; defining terms; providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product; providing an effective date.

WHEREAS, the Legislature finds that the abuse of opioids is a serious problem that affects the health, social, and economic welfare of this state, and

WHEREAS, the Legislature finds that an estimated 2.1 million people in the United States suffered from substance use disorders related to prescription opioid pain relievers in 2012, and

WHEREAS, the Legislature finds that the number of unintentional overdose deaths from prescription pain relievers has more than quadrupled since 1999, and

WHEREAS, the Legislature is convinced that it is imperative for people suffering from pain to obtain the relief they need while minimizing the potential for negative consequences, NOW, THEREFORE,

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

30-00639C-15 2015728__

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

Section 1. Section 627.64194, Florida Statutes, is created to read:

627.64194 Requirements for opioid coverage.—

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

(a) "Abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the United States Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse.

(b) "Opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

(2) COVERAGE REQUIREMENTS.—A health insurance policy that provides coverage for opioid analgesic drug products:

(a) May impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim which is covered by the policy.

(b) May not require use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

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

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

THE FLORIDA SENATE APP COMM 1:00

APPEARANCE RECORD

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

4-9-2015
Meeting Date

SB 728
Bill Number (if applicable)

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DR
Street

Phone 878-7364

TALLAHASSEE FL 32301
City *State* *Zip*

Email

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

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

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

APPEARANCE RECORD

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

4/9/15
Meeting Date

728
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave
Street
Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Public Health Association / Florida Chapter, American College of Physicians

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)

April 9, 2015
Meeting Date

SB 728
Bill Number (if applicable)

Topic Health Insurance Coverage for Opioids
Amendment Barcode (if applicable)

Name Heather Youmans

Job Title Government Relations Director

Address 2619 Centennial Blvd Suite 101
Street

Phone 850-251-2111

Tallahassee FL 32308
City *State* *Zip*

Email heather.youmans@cancer.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing American Cancer Society Cancer Action Network, Inc.

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)

4/9/15
Meeting Date

728
Bill Number (if applicable)

Topic Health Ins for Opioids

Amendment Barcode (if applicable)

Name Jill Gran

Job Title

Address 2868 Mahan Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 878-2194

Email jill@fdaa.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 766
INTRODUCER:	Appropriations Committee; Judiciary Committee; and Senator Hukill
SUBJECT:	Surveillance by a Drone
DATE:	April 10, 2015
REVISED:	4/13/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Procaccini	Cibula	JU	**Fav/CS**
3.	Davis	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 766 generally prohibits a person, state agency, or political subdivision from using a drone to record an image of privately owned real property of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property, if reasonable expectations of privacy exist without that individual's written consent. The bill provides a definition of the term surveillance.

However, the bill also allows limited exceptions to the prohibition. A person or entity engaged in a business or profession licensed by the state, may use a drone to perform reasonable tasks within the scope of his or her license. Additionally, tax collectors may use drones for assessing property for ad valorem taxes. Lastly, a drone may be used to capture images by or for an electric, water, or natural gas utility.

The bill authorizes an aggrieved party to initiate a civil action and obtain compensatory damages or injunctive relief against a person, state agency, or political subdivision that violates the bill's prohibitions on using drones. This remedy may result in monetary damages, which may have an indeterminate negative fiscal impact on state and local governments.

This bill provides an effective date of July 1, 2015.

II. Present Situation:

History of Drones

Drones are unmanned aircraft, capable of being operated remotely or autonomously on a preprogrammed path. A drone can be the size of a mosquito or as large as a commercial airplane.[1] Additional drone features include thermal scanners, license plate readers, tracking, crop dusting, and an array of continuously developing technologies.[2] The Federal Aviation Administration (FAA) authorized drones as far back as 1990 for a broad array of domestic uses by governmental entities including firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research.[3] In recent years, drones have been increasingly operated by members of the public (in addition to governmental actors), for commercial and recreational purposes. One prominent drone manufacturer estimates that more than 500,000 personal drones have been sold in the United States alone.[4]

As drones have become more commonplace and drone technologies have improved, their universe of potential commercial uses has broadened. Drones are being used by commercial photographers and filmmakers, due to their high-power cameras and aerial picture perspective.[5] Additional commercial uses for drones are being explored by Google and Amazon, which have made significant investments in development of drone parcel delivery systems.[6]

The use of a drone for commercial operation is prohibited unless the drone operator has received prior approval from the FAA through one of three certificate programs:[7]

- Section 333 exemption and a Certificate of Waiver or Authorization (COA). This certificate may be used for commercial operations in low-risk, controlled environments.
- Special Airworthiness Certificate – Experimental Category. This certificate is for experimentation and research on new drone designs. "For-hire" operations are prohibited under this certificate.
- Special Airworthiness Certificate – Restricted Category. For a special purpose or a type certificate for production of the drone.

All public (governmental) drone operators must go through the Public COA process.[8] Model aircraft operators do not need permission from the FAA to fly.[9] While the number of authorized

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[1] Taly Matiteyahu, 48 COLUM. J.L. & SOC. PROBS. 265, 1 (Winter, 2015).
[2] *Id.*
[3] Federal Aviation Administration, *Fact Sheet – Unmanned Aircraft Systems (UAS)* (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsid=18297.
[4] David Rose, THE ATLANTIC, *Dudes with Drones* (Nov. 2014), http://www.theatlantic.com/magazine/print/2014/11/dudes-with-drones/380783/.
[5] *Id.*
[6] Alexis Madrigal, THE ATLANTIC, *Inside Google's Secret Drone-Delivery Program* (Aug. 2014) http://www.theatlantic.com/technology/print/2014/08/inside-googles-secret-drone-delivery-program/379306/.
[7] Federal Aviation Administration, *Civil Operations (Non-Governmental)*, http://www.faa.gov/uas/civil_operations/ (Page last modified Mar. 4, 2015).
[8] Federal Aviation Administration, *Unmanned Aircraft Systems – Frequently Asked Questions*, http://www.faa.gov/uas/faq/ (Page last modified Mar. 4, 2015).
[9] Federal Aviation Administration *Model Aircraft Operations*, http://www.faa.gov/uas/model_aircraft/ (Page last modified Mar. 4, 2015).

commercial operators is still small (24), the FAA continues to grant more regulatory exemptions, including one recent exemption for "flare stack inspections."[10] Those numbers will increase exponentially soon, as the FAA is nearing completion of an initial rule related to the use of small (under 55 pounds) drones, pursuant to the FAA Modernization and Reform Act of 2012.[11] The rule would allow "routine use of certain small unmanned aircraft systems," clearing the way for much wider commercial use of drones by the private sector.[12] The draft rule for small drones was released on February 15, 2015, opening a 60-day period for public comment prior to finalization of the rule.[13]

While drones have already been put to a wide array of uses, their potential uses are practically boundless. Researchers in France have found that drones are very useful for monitoring birds without disturbing them and have "a lot of potential to revolutionize bird censuses."[14] Developers at Google believe that, at best, drones could be the foundation of a new "access society" that relies on principles similar to the burgeoning "sharing economy" underpinning companies such as Uber and Airbnb, rather than today's "ownership society."[15] At worst, drones represent a much faster, cheaper and safer option for shipping packages.[16] One successful drone developer believes that drones will be able to respond to speech commands and may even be able to walk your dog. Another developer predicts that they will be so ubiquitous that in developed countries there will be one drone per person.[17] As a result, *Business Insider* predicts that the drone industry will generate $10 billion in new spending over the next decade.[18]

Privacy Issues Related to Drones

As stated prior, drones are manufactured in all shapes and sizes, from the 6.5 inch, 19 gram AeroVironment's Nano Hummingbird to massive drones with wingspans up to 150 feet and weights over 30,000 pounds.[19] Some drones are powered by batteries with lifespans of a few minutes, while others are designed to stay aloft for days at a time.[20] Some drones are built to last, while others are built to decompose.[21] Some drones are designed to fly like an airplane, some use

[10] Federal Aviation Administration, *FAA Grants Eight More UAS Exemptions*, http://www.faa.gov/news/updates/?newsId=81565 (Page last modified Feb. 3, 2015).
[11] Office of the Press Secretary, The White House, *Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems* (Feb. 15, 2015), https://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua/ .
[12] Federal Aviation Administration, *Press Release – DOT and FAA Propose New Rules for Small Unmanned Aircraft Systems* (Feb. 15, 2015), http://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295.
[13] *Id.*
[14] Nicholas St. Fleur, THE ATLANTIC, *Birds Are Mostly Cool with Drones* (Feb. 2015), http://www.theatlantic.com/technology/print/2015/02/drones-might-not-disrupt-birds-after-all/385338/.
[15] Madrigal, *supra* note 6.
[16] *Id*.
[17] Rose, *supra* note 4.
[18] Matt Schiavenza, THE ATLANTIC, *FAA Drone Regulations Deal Blow to Amazon* (Feb. 15, 2015), http://www.theatlantic.com/business/archive/2015/02/faa-drone-regulations-deal-blow-to-amazon/385529/.
[19] Jonathan Olivito, 74 OHIO STATE L.J., 670, *Beyond the Fourth Amendment: Limiting Drone Surveillance Through the Constitutional Right to Informational Privacy* (2013).
[20] *Id.*
[21] Shirley Li, THE ATLANTIC, *A Drone for the Environment* (Nov. 2014), http://www.theatlantic.com/technology/print/2014/11/a-drone-for-the-environment/382776/.

rotors similar to a helicopter, while others have the ability to enter "perch and stare" mode.[22] Perhaps even more relevant to a discussion of their potential privacy implications, drones can be equipped with a wide array of sensory equipment, including high-magnification lenses, infrared, ultraviolet and see-through imaging devices, acoustical eavesdropping devices, laser optical microphones, and face and body recognition software.[23]

This variety of designs and technology means that drones possess capabilities which could be used by private individuals or commercial organizations to breach reasonable expectations of privacy, including the voyeuristic actions of spying on and recording private acts. Because of their ability to stay aloft for long durations, drones could track a person's every move, if not indefinitely, then at least over a period of days. While larger drones may be more useful for following a person in more rural areas, smaller drones work better in urban areas. A drone could be programed to watch a specific piece of property for a period of time, or could have its facial recognition software programmed so that it automatically focused on a single person in a crowd. One drone could watch a building (or look inside the building), while another listens to conversations taking place inside. Or one drone outfitted with the proper equipment could perform all three tasks at once.

The prospect of constant monitoring, whether performed by a government entity or some private entity (perhaps a potential employer, insurance company, private detective, etc.), may have a chilling effect on associational and expressive freedoms enjoyed by the American populace. Some commentators argue that such constitutional rights, in addition to an "assumed" (but not decided) constitutional right to privacy, are not adequately protected by currently existing laws. A discussion of those laws (both statutory and common) and their possible shortcomings as applied to privacy in the context of drones, is presented below.

Nuisance Law

In ancient common law doctrine, ownership of the land "extended to the periphery of the universe."[24] However, the Supreme Court abrogated the common law in 1946 when it held that flights over property only constitute a taking if they are "so low and so frequent as to be a direct and immediate interference with the enjoyment and use of the land."[25] Due to the relatively high altitude and relatively quiet operation of drones, it is unlikely that the isolated use of a drone would support a nuisance claim.[26] However, if a property owner were regularly subjected to the interference of the enjoyment of his land by a low-flying drone, then that owner might be able to maintain a nuisance claim.[27]

[22] Olivito, *supra* note 18 at 677.
[23] *Id.*
[24] *United States v. Causby*, 328 U.S. 256, 260 (1946) (The Court explained the common law doctrine with the Latin sentence, "Cujus est solum ejus est usque ad coelom," which means whoever owns soil, is theirs all the way to Heaven and to Hell.
[25] *Id.* at 265.
[26] Olivito, *supra* note 18 at 680.
[27] *See* Y. Douglas Yang, *Big Brother's Grown Wings: The Domestic Proliferation of Drone Surveillance and the Law's Response*, 23 B.U. PUB. INT. L.J. 343, note 266 (Summer 2014).

Trespass Law

A claim of trespass might be supported against an aircraft if the aircraft flies so low as to interfere substantially with the owner's use and enjoyment of the land.[28] However, drones often fly at an altitude lower than low-flying airplanes and yet well above a property owner's land. This airspace has been described as a property rights no-man's land for which courts have not defined a property owner's property interest.[29]

Intrusion upon Seclusion

The tort of intrusion upon seclusion must be supported by two findings:

- That a person intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, and
- The intrusion would be highly offensive to a reasonable person.

The key to successfully alleging an intrusion upon seclusion is that the victim had a "reasonable expectation of privacy."[30] As will be discussed more fully in relation to the inadequacy of Fourth Amendment protections, it is very difficult for a person to maintain a reasonable expectation of privacy outside of their private home or car. The fact that the intrusion must be "highly offensive to the reasonable person" narrows the scope of protection provided by this common law further.[31] However, "[c]onduct that amounts to a persistent course of hounding, harassment and unreasonable surveillance, even if conducted in a public or semi-public place, may nevertheless rise to the level of invasion of privacy based on intrusion upon seclusion."[32]

Publication of Private Facts

To commit the tort of publication of private facts, a person must publish or broadcast private information about someone else and the disclosure of that information would be highly offensive to the reasonable person and the information is not a matter of legitimate public concern.[33] Again, the scope of protection is limited by the fact that the disclosure must be highly offensive to the reasonable person. Also significant, the private information must be actually published to trigger the tort. Should the person collecting the information through the drone never actually widely disseminate any of the information, the victim may be prevented from asserting an injury under this doctrine.

Section 810.14, Florida Statutes – Voyeurism

A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent:

- Secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

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[28] United States v. Causby, 328 U.S. 256, 1068 (1946).
[29] Colin Cahoon, *Low Altitude Airspace: A Property Rights No-Man's Land*, 56 J. AIR L. & COM. 157, 197-198 (Fall 1990).
[30] Restatment (Second) of Torts s. 652B.
[31] *Beyond the Fourth Amendment* at 680.
[32] *Goosen v. Walker*, 714 So. 2d 1149, 1150 (Fla. 4th DCA 1998) (quoting *Wolfson v. Lewis*, 924 F.Supp 1413 (E.D. Pa. 1996)).
[33] *Heath v. Playboy Enterprises, Inc.*, 732 F.Supp. 1145, 1148 (S.D. Fla. 1990).

- Secretly observes another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance. As here, the term "intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

Wiretapping

Section 934.03, F.S., restricts people from intentionally intercepting wire, oral, or electronic communications. This statute in its current form appears applicable to drones. However, the protection from the statute is qualified by the requirement that a victim has a reasonable expectation of privacy.[34]

Fourth Amendment Jurisprudence

The Fourth Amendment to the United States Constitution protects against "unreasonable searches and seizures" by the government. The amendment provides some protection against drone surveillance directed at a private home, particularly when the drone uses a sense-enhancing technology; however, recent Supreme Court decisions have greatly circumscribed those protections.[35] Furthermore, the Fourth Amendment provides almost no protection against drone surveillance conducted in public places, which effectively is anywhere outside of a home.[36]

In *California v. Ciraolo*¸ 476 U.S. 207 (1986), the U.S. Supreme Court held that it was not a violation of the Fourth Amendment for a police department to fly in a plane 1,000 feet over a person's backyard (which was surrounded by a six-foot fence and a second ten-foot fence) in order to observe that person's property. The Court's holding was based on the fact that the backyard was visible from a "public vantage point," in this case, a plane flying 1,000 feet above the backyard.

In *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986), the Supreme Court extended its holding in *Ciraolo*, holding that it was not a violation of the Fourth Amendment prohibition on searches and seizures for the Environmental Protection Agency to charter a private plane equipped with a camera with a magnification capability of 240x to take aerial photographs of a chemical manufacturing plant to which it had been denied access by the landowner.

Finally, in *Florida v. Riley*, 488 U.S. 445 (1989), a police department used a helicopter to fly 400 feet above a private greenhouse that was missing two panels on the roof. A deputy on board the helicopter looked through the uncovered portion of the roof and saw marijuana growing in the greenhouse. The U.S. Supreme Court held this was not a violation of the Fourth Amendment because the defendant did not have a reasonable expectation of privacy in the portion of his greenhouse that was partially exposed to aerial observation.

[34] *Jatar v. Lamaletto*, 758 So. 2d 1167, (Fla. 3d DCA 2000).
[35] Olivito, *supra* note 18 at 682.
[36] *Id.*

In summary, the Fourth Amendment may only protect a private landowner from drone surveillance if that person is within a portion of his or her home that is not observable from the air. Once that person is out in a public (or private) area that does not provide that person with a reasonable expectation of privacy, the government likely could observe that person via a drone without violating the Fourth Amendment. The Fourth Amendment does not provide any protection against actions taken by private actors, unless those actions were pursuant to governmental direction.[37]

Section 934.50, Florida Statutes – Searches and Seizure Using a Drone

The Freedom from Unwarranted Surveillance Act, passed by the Legislature in 2013, prohibits a law enforcement agency from using a drone to gather evidence or other information, subject to certain exceptions. The law does not restrict the use of drones to engage in surveillance by private actors.

III. Effect of Proposed Changes:

General Prohibition on the Use of Drones for Surveillance

This bill prohibits a person, state agency or political subdivision from using a drone equipped with an imaging device[38] to record an image[39] of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance[40] on the property or person. The surveillance must be in violation of the person's reasonable expectation of privacy and without his or her written consent. The bill provides that a person is presumed to have a reasonable expectation of privacy if the person is not observable by a person at ground level, regardless of whether the person is observable by a drone in the air. However, the bill expressly provides that it is not intended to limit or restrict the application of federal law to the use of drones.

Authorized Users of Drones

The bill includes the following exceptions to those who may use a drone.

- The first exception is for a person or entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor of the state only if the drone is used to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which

[37] Findlaw, *When the Fourth Amendment Applies*, http://criminal.findlaw.com/criminal-rights/when-the-fourth-amendment-applies.html (last visited Mar. 14, 2015).
[38] The bill defines the term "imaging device" as a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.
[39] The bill defines the term "image" as a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.
[40] The bill creates a definition of "surveillance". The bill defines surveillance with respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property as to observe, with visual clarity that is sufficient to be able to obtain information about, the identity, habits, conduct, movements, or whereabouts of such person or persons. The bill defines surveillance with respect to privately owned real property as to observe, with visual clarity that is sufficient to be able to obtain information about, the property's physical improvements, unique identifying features, or occupancy by one or more persons.

the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

- The second exception is for an employee or a contractor of a property appraiser who uses a drone solely for the purposes of assessing property for ad valorem taxes.
- The third exception is for an electric, water, or natural gas utility to capture images for:
  - Operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
  - Inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
  - Assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
  - Utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility services; or
  - Conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.

Enforcement of Privacy Rights

The bill provides that an owner, tenant, occupant, invitee, or licensee of privately owned real property may receive compensatory damages and seek an injunction against future surveillance. A prevailing party is entitled to recover reasonable attorney fees under the bill. Additionally, if a case is tried to verdict, a contingency fee multiplier of up to two times the actual value of the attorney's time spent may be awarded to the plaintiff at the discretion of the court. A contingency fee multiplier is designed to promote access to the courts by providing an incentive to lawyers to take cases they might not otherwise accept.[41] The bill also authorizes punitive damages for a violation of the bill's prohibition on use of drones and provides that the remedies provided in the bill are cumulative to other existing remedies.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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 Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

[41] *See e.g.*, *Lane v. Head*, 566 So. 2d 508, 513 (Fla. 1990) (Grimes, J., concurring).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who uses a drone to conduct surveillance of persons or property may be liable for damages under CS/CS/SB 766.

C. Government Sector Impact:

The bill authorizes an aggrieved party to initiate a civil action and obtain compensatory damages or injunctive relief against a state agency or political subdivision that violates the bill's prohibitions on using drones. This remedy may result in monetary damages, which may have an indeterminate negative fiscal impact on state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 9, 2015:
The committee substitute:

- Defines the term "surveillance."
- Creates an exception for the use of a drone by an electric, water, or natural gas utility in certain circumstances.
- Removes "occupied" real property as a property that is protected from surveillance by drones.

CS by Judiciary on March 24, 2015:
The committee substitute differs from the underlying bill by:

- Adding licensees and invitees on private property to the list of individuals whose privacy is protected by the bill.
- Generally authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state, within the scope of a license.
- Authorizing tax collectors to use drones for assessing property for ad valorem taxes.

B. Amendments:

None.

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

856286

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 105
and insert:
(e) "Surveillance" means:
1. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or

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2. With respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

(3) PROHIBITED USE OF DRONES.—

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone. This paragraph is not intended to limit or restrict the application of federal law to the use of drones.

(4) EXCEPTIONS.—This section ~~act~~ does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search

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warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(d) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(e) By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(f) To capture images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;

2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;

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3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;

4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or

5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.

(5) REMEDIES FOR VIOLATION.—

(a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this section ~~act~~.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned real property may initiate a civil

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

And the title is amended as follows:

Delete line 16

and insert:

assessing property for ad valorem taxation;

authorizing the use of a drone by or on behalf of certain utilities for specified purposes; providing

By the Committee on Judiciary; and Senator Hukill

590-02824-15 2015766c1

A bill to be entitled

An act relating to surveillance by a drone; amending s. 934.50, F.S.; defining terms; prohibiting a person, a state agency, or a political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; specifying when a reasonable expectation of privacy may be presumed; authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state in certain circumstances; authorizing the use of a drone by an employee or contractor of a property appraiser for the purpose of assessing property for ad valorem taxation; providing that an owner, tenant, occupant, invitee, or licensee may initiate a civil action for compensatory damages and may seek injunctive relief against a person, a state agency, or a political subdivision that violates the act; providing for construction; providing for the recovery of attorney fees and punitive damages; specifying that remedies provided by the act are cumulative to other remedies; providing an effective date.

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

Section 1. Section 934.50, Florida Statutes, is amended to

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

590-02824-15 2015766c1

read:

934.50 Searches and seizure using a drone.—

(1) SHORT TITLE.—This act may be cited as the "Freedom from Unwarranted Surveillance Act."

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

(a) "Drone" means a powered, aerial vehicle that:

1. Does not carry a human operator;

2. Uses aerodynamic forces to provide vehicle lift;

3. Can fly autonomously or be piloted remotely;

4. Can be expendable or recoverable; and

5. Can carry a lethal or nonlethal payload.

(b) "Image" means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

(c) "Imaging device" means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

(d) ~~(b)~~ "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(3) PROHIBITED USE OF DRONES.—

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as

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

defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned or occupied real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone. This paragraph is not intended to limit or restrict the application of federal law to the use of drones for surveillance purposes.

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(d) By a person or entity engaged in a business or

profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(e) By an employee or contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(5) REMEDIES FOR VIOLATION.—

(a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this act.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned or occupied real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3)(b). In such action, the prevailing party is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in

the discretion of the trial court.

(c) Punitive damages for a violation of paragraph (3)(b) may be sought against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided for a violation of paragraph (3)(b) are cumulative to other existing remedies.

(6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or collected in violation of this act is not admissible as evidence in a criminal prosecution in any court of law in this state.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 25, 2015

The Honorable Tom Lee
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 766 – Surveillance by Drone

Dear Chairman Lee:

Senate Bill 766, relating to Surveillance by a Drone has been referred to the Appropriations Committee. I am requesting your consideration on placing SB 766 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Cindy Kynoch, Staff Director of the Appropriations Committee
Alicia Weiss, Administrative Assistant of the Appropriations Committee

SENATE APPROPRIATIONS
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STAFF DIR. STAFF

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 766

Meeting Date *Bill Number (if applicable)*

Topic Drones *Amendment Barcode (if applicable)*

Name DAN PETERSON

Job Title Director Center for Property Rights

Address 2878 S Osceola Ave Phone 407 758 2491

Street

Orlando FL 32806 Email dpeterson@jamesmadison.org

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing James Madison Institute

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 818 (164078)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Garcia
SUBJECT:	Maximum Class Size
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 818 revises the method for calculating the penalty for failure to comply with the class size requirements by calculating the penalty at the school average rather than the classroom level. The bill also revises the penalty calculation to multiply the number of full-time equivalent students in excess of the class size requirements by 50 percent of the base student allocation (BSA) rather than the full base student allocation.

The bill also removes the class size reduction calculation provision that authorizes the Commissioner to reallocate funds from noncompliant school districts to school districts that have fully met the class size requirements. In place of this reallocation, the bill requires each noncompliant school district to expend an amount of funds equal to the amount of the class size reduction calculation in the noncompliant schools to comply with the class size requirements as determined at the school average. Noncompliant school districts are required to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

This bill has no impact on state funds. The bill would reduce the initial penalty for schools not in compliance with class size requirements. For the current year, for traditional public schools, the initial penalty for non-compliance was $11.3 million. If the school average had been the standard for compliance along with the use of 50 percent of the BSA, the initial penalty would have been $57,144. According to the Department of Education, schools of choice and charter schools, both

of which are already subject to the school average requirement, would have seen their penalties reduced from $421,513 to $257,000 and from $2.8 million to $1.9 million, respectively, due to revising the base student allocation portion of the penalty calculation to 50 percent.

This bill takes effect on July 1, 2015.

II. Present Situation:

In 2002, voters approved the Class Size Reduction Amendment to Section 1, Article IX of the Florida Constitution.[1] The amendment requires the Legislature to make provisions to ensure that there are a sufficient number of classrooms in Florida so the maximum number of students assigned to each teacher does not exceed:

- 18 students in prekindergarten through grade 3;
- 22 students in grades 4 through 8; and
- 25 students in grades 9 through 12.[2]

Implementation of Class Size Reduction Amendment

In 2003, the Legislature enacted s. 1003.03, F.S., to implement the amendment's requirements.[3] The law required each school district not in compliance with the constitutionally prescribed maximums to annually reduce its average number of students per classroom by two students beginning in 2003-2004 fiscal year.[4] Further, it specified the number of students per classroom is to be measured at the:

- District level for each of the three grade groupings during fiscal years 2003-2006.
- School level for each of the three grade groupings in fiscal years 2006-2009.
- Individual classroom level for each of the three grade groupings in fiscal year 2009-2010 and thereafter.[5]

Currently, the compliance requirements for traditional public schools is calculated at the classroom level.[6]

Charter Schools and Public Schools of Choice

In 2010, the compliance calculation for charter schools was changed from class level average to the school level average.[7] In 2013, the school level average calculation was applied to district

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[1] Office of Program Policy Analysis & Government Accountability, *School Districts are Reducing Class Size in Several Ways; May be able to Reduce Costs*, (May 3007), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0729rpt.pdf .
[2] Art. IX, s. 1(a) Fla. Const.
[3] Section 2, ch. 2003-391, L.O.F., *codified at* s. 1003.03, F.S.
[4] Section 1003.03, F.S.
[5] Section 2, ch. 2003-391, L.O.F., *codified at* s. 1003.03(2)(b), F.S. (2003).
[6] Each year, on or before the October student membership survey, the maximum number of student assigned to each teacher who is teaching core-curricula courses for prekindergarten through grade 3 may not exceed 18 students, school classrooms for 4-8 may not exceed 22 students, core-curricula courses in 9-12 may not exceed 25 students. *See* ss. 1003.03(1), F.S. and 1002.33(16)(b)3, F.S.
[7] Section 6, ch. 2010-154, L.O.F., *codified at* s. 1002.33(16)(b)3, F.S. (2010).

operated schools of choice.[8] District school boards annually report the number of students attending the various types of public schools of choice, which may include: virtual instruction programs, magnet schools, and public charter school.[9]

Class Size Categorical Reduction Allocation

Traditional public schools have class size limits set in every core-curricula classroom.[10] Class size is measured at the classroom level average and if the district fails to comply with the class size requirements, a portion of the district class size reduction categorical funds are reduced.[11]

Funding

The Class Size Reduction Allocation is funded with state funds in the Florida Education Finance Program (FEFP) based on a factor that compensates school districts for the additional teachers needed to achieve the class sizes of 18, 22, and 25 for grades prekindergarten to 3, 4 to 8, and 9 to 12, respectively.[12] Full funding was achieved by 2009-10 and since then, funds have been adjusted for workload.[13] In 2014-15, total funds are $3 billion.[14]

Compliance – Funding Adjustment

For 2014-15, school districts are required to comply with class size requirements at the classroom level for each of the grade groups.[15] If a district is out of compliance, an initial reduction to the district's class size allocation is calculated by cumulating the excess students in a classroom and then multiplying the total by the class size reduction factor and the base student allocation.[16] The initial penalty was calculated and determined to be $11.3 million for traditional schools.[17]

For charter schools and schools of choice, compliance is measured based on the average class size for each school.[18] Once compliance is determined, the calculation proceeds in the same manner as for traditional schools.[19] The initial penalty was $2.8 million for charter schools and $421,513 for schools of choice for 2014-15.[20]

[8] Florida Department of Education, *2014 Agency Legislative Bill Analysis for HB 319* (2014).
[9] Section 1002.31(4), F.S.
[10] Section 1003.01(14), F.S.
[11] Section 1003.03(4), F.S.
[12] Section 1003.03, F.S.
[13] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[14] *Id.*
[15] Section 1003.03(4), F.S.
[16] *Id.*
[17] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[18] Section 6, ch. 2010-154, L.O.F., *codified at* s. 1002.33(16)(b)3, F.S. (2010).
[19] *Id.*
[20] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.

Following the initial reduction calculation, the Commissioner can review appeals from school districts and make a recommendation to the Legislative Budget Commission for an alternate reduction amount.[21] For 2014-15, the Commissioner's recommendation is based on data errors and unexpected student growth.[22] Following appeals, the Commissioner's alternate penalty recommendation for 2014-15 is $1.3 million for traditional schools, $562,397 for charter schools, and $177,347 for schools of choice.[23] If approved, 25% of the penalty funds will be allocated to compliant districts and schools, and if the noncompliant districts and schools submit a plan to achieve compliance in the following school year, then 75% of the penalty will be waived.[24]

III. Effect of Proposed Changes:

The bill revises the method for calculating the penalty for failure to comply with the class size requirements by performing the calculation at the school average instead of at the classroom level. The bill also revises the penalty calculation to multiply the number of full-time equivalent students in excess of the class size requirements by 50 percent of the BSA rather than the full base student allocation.

Changes to the calculation of full-time equivalent (FTE) students greater than the class size maximums in traditional public schools to be based on school level averages, rather than at the classroom level, will reduce the amount of FTE out of compliance used to calculate the reduction to the class size allocation.[25] Furthermore, the change to the BSA for the penalty calculation will reduce the penalty associated with the FTE that are out of compliance for traditional schools, schools of choice, and charter schools.

The bill removes the class size reduction calculation provision that authorizes the Commissioner to reallocate funds from noncompliant school districts to school districts that have fully met the class size requirements. In place of this reallocation, the bill requires each noncompliant school district to expend an amount of funds equal to the amount of the class size reduction calculation in the noncompliant schools to comply with the class size requirements as determined at the school average. Noncompliant school districts are required to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[21] Section 1003.03(4), F.S.
[22] *Id.*
[23] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[24] *Id.*
[25] Florida Department of Education, *2014 Agency Legislative Bill Analysis for HB 319* (July 2014).

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:

PCS/SB 818 has no impact on state funds. The bill would reduce the penalty for schools not in compliance with class size requirements. For the current year, for traditional public schools, the initial penalty for non-compliance was $11.3 million. If the school average had been the standard for compliance along with the use of 50 percent of the BSA, the initial penalty would have been $57,144. According to the Department of Education, schools of choice and charter schools, both of which are already subject to the school average requirement, would have seen their penalties reduced from $421,513 to $257,000 and from $2.8 million to $1.9 million, respectively, due to revising the base student allocation portion of the penalty calculation to 50 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.03 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Education on March 16, 2015:
The committee substitute:

- Modifies the charter school and district innovation school of technology class size requirement statutes to conform to the bill's language for traditional public schools.
- Removes the class size provision allowing for the reallocation of funds from noncompliant school districts to compliant school districts.
- Specifies that each noncompliant school district shall expend an amount of funds equal to the amount of the class size reduction calculation in the noncompliant schools to comply with the class size requirements as determined at the school average.
- Requires noncompliant school districts to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

B. Amendments:

None.

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

348118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; public school parental choice.—

~~(5) For a school or program that is a public school of choice under this section, the calculation for compliance with~~

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~~maximum class size pursuant to s. 1003.03 is the average number of students at the school level.~~

Section 2. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level~~.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

Section 3. Paragraph (a) of subsection (5) of section 1002.451, Florida Statutes, is amended to read:

1002.451 District innovation school of technology program.—

(5) EXEMPTION FROM STATUTES.—

(a) An innovation school of technology is exempt from chapters 1000-1013. However, an innovation school of technology shall comply with the following provisions of those chapters:

348118

1. Laws pertaining to the following:

a. Schools of technology, including this section.

b. Student assessment program and school grading system.

c. Services to students who have disabilities.

d. Civil rights, including s. 1000.05, relating to discrimination.

e. Student health, safety, and welfare.

2. Laws governing the election and compensation of district school board members and election or appointment and compensation of district school superintendents.

3. Section 1003.03, governing maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level~~.

4. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

7. Section 1012.34, relating to requirements for performance evaluations of instructional personnel and school administrators.

Section 4. Subsection (4) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(4) ACCOUNTABILITY.—

348118

(a) If the department determines that the number of students assigned to any individual class exceeds the class size maximum, as required in subsection (1), based upon the October student membership survey, the department shall:

1. ~~Identify, for each grade group, the number of classes in which the number of students exceeds the maximum and the total number of students which exceeds the maximum for all classes.~~

~~2.~~ Determine the number of FTE students which exceeds the maximum for each grade group calculated at the school average.

2.~~3.~~ Multiply the total number of FTE students which exceeds the maximum for each grade group calculated at the school average by the district's FTE dollar amount of the class size categorical allocation for that year and calculate the total for all three grade groups.

3.~~4.~~ Multiply the total number of FTE students which exceeds the maximum for all classes calculated at the school average by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for ~~each of the 2010-2011 through 2013-2014 fiscal years and by an amount equal to the base student allocation adjusted by the district cost differential in~~ the 2014-2015 fiscal year and thereafter.

4.~~5.~~ Reduce the district's class size categorical allocation by an amount equal to the sum of the calculations in subparagraphs 2. and 3. ~~and 4.~~

(b) The amount of funds reduced shall be the lesser of the amount calculated in paragraph (a) or the undistributed balance of the district's class size categorical allocation. The Florida Education Finance Program Appropriation Allocation Conference shall verify the department's calculation in paragraph (a). The

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commissioner may withhold distribution of the class size categorical allocation to the extent necessary to comply with paragraph (a).

(c) In lieu of the reduction calculation in paragraph (a), if the Commissioner of Education has evidence that a district was unable to meet the class size requirements despite appropriate efforts to do so or because of an extreme emergency, the commissioner may recommend by February 15, subject to approval of the Legislative Budget Commission, the reduction of an alternate amount of funds from the district's class size categorical allocation.

(d) Upon approval of the reduction calculation in paragraphs (a)-(c), each district shall retain the calculated reduction amount and expend the amount in the noncompliant schools to comply with the requirements in subsection (1) ~~the commissioner must prepare a reallocation of the funds made available for the districts that have fully met the class size requirements~~. ~~The funds shall be reallocated by calculating an amount of up to 5 percent of the base student allocation multiplied by the total district FTE students. The reallocation total may not exceed 25 percent of the total funds reduced.~~

(e) Each district that has not complied with the requirements in subsection (1) shall submit to the commissioner by February 1 a plan certified by the district school board that describes the specific actions that the district will take in order to fully comply with the requirements in subsection (1) by October of the following school year. The plan shall be posted on the district's website and be provided to the school advisory council of each noncompliant school. A noncompliant school may

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post the plan on its website ~~If a district submits the certified plan by the required deadline, the funds remaining after the reallocation calculation in paragraph (d) shall be added back to the district's class size categorical allocation based on each qualifying district's proportion of the total reduction for all qualifying districts for which a reduction was calculated in paragraphs (a)-(c). However, no district shall have an amount added back that is greater than the amount that was reduced.~~

~~(f) The department shall adjust school district class size reduction categorical allocation distributions based on the calculations in paragraphs (a)-(c).~~

Section 5. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to maximum class size; amending s. 1002.31, F.S.; deleting a provision relating to compliance with maximum class size requirements for certain public schools of choice; amending s. 1002.33, F.S.; revising requirements for charter school compliance with maximum class size requirements; amending s. 1002.451, F.S.; revising requirements for district innovation school of technology compliance with maximum class size requirements; amending s. 1003.03, F.S.; calculating a school district's class size categorical allocation reduction at the school

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average when maximum class size requirements are not met; revising the calculation; providing for the expenditure of funds; requiring a school district that exceeds class size maximums to post its plan for compliance on the district website and provide the plan to the school advisory council of each noncompliant school; authorizing a noncompliant school to post the plan on its website; providing an effective date.

164078

576-02322-15

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to maximum class size; amending s. 1002.33, F.S.; revising requirements for charter school compliance with maximum class size requirements; amending s. 1002.451, F.S.; revising requirements for district innovation school of technology compliance with maximum class size requirements; amending s. 1003.03, F.S.; calculating a school district's class size categorical allocation reduction at the school average when maximum class size requirements are not met; revising the calculation; providing for the expenditure of funds; requiring a school district that exceeds class size maximums to post its plan for compliance on the district website and provide the plan to the school advisory committee of each noncompliant school; authorizing a noncompliant school to post the plan on its website; providing an effective date.

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

Section 1. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

164078

576-02322-15

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level~~.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

Section 2. Paragraph (a) of subsection (5) of section 1002.451, Florida Statutes, is amended to read:

1002.451 District innovation school of technology program.—

(5) EXEMPTION FROM STATUTES.—

(a) An innovation school of technology is exempt from chapters 1000-1013. However, an innovation school of technology shall comply with the following provisions of those chapters:

1. Laws pertaining to the following:

a. Schools of technology, including this section.

b. Student assessment program and school grading system.

c. Services to students who have disabilities.

d. Civil rights, including s. 1000.05, relating to discrimination.

e. Student health, safety, and welfare.

2. Laws governing the election and compensation of district

school board members and election or appointment and compensation of district school superintendents.

3. Section 1003.03, governing maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level~~.

4. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

7. Section 1012.34, relating to requirements for performance evaluations of instructional personnel and school administrators.

Section 3. Subsection (4) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(4) ACCOUNTABILITY.—

(a) If the department determines that the number of students assigned to any individual class exceeds the class size maximum, as required in subsection (1) and as determined at the school average, based upon the October student membership survey, the department shall:

1. ~~Identify, for each grade group, the number of classes in which the number of students exceeds the maximum and the total number of students which exceeds the maximum for all classes.~~

~~2.~~ Determine the number of FTE students which exceeds the maximum for each grade group calculated at the school average.

2.~~3.~~ Multiply the total number of FTE students which exceeds the maximum for each grade group calculated at the school average by the district's FTE dollar amount of the class size categorical allocation for that year and calculate the total for all three grade groups.

3.~~4.~~ Multiply the total number of FTE students which exceeds the maximum for all classes calculated at the school average by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for ~~each of the 2010-2011 through 2013-2014 fiscal years and by an amount equal to the base student allocation adjusted by the district cost differential in~~ the 2014-2015 fiscal year and thereafter.

4.~~5.~~ Reduce the district's class size categorical allocation by an amount equal to the sum of the calculations in subparagraphs 2. and 3. ~~and 4.~~

(b) The amount of funds reduced shall be the lesser of the amount calculated in paragraph (a) or the undistributed balance of the district's class size categorical allocation. The Florida Education Finance Program Appropriation Allocation Conference shall verify the department's calculation in paragraph (a). The commissioner may withhold distribution of the class size categorical allocation to the extent necessary to comply with paragraph (a).

(c) In lieu of the reduction calculation in paragraph (a), if the Commissioner of Education has evidence that a district was unable to meet the class size requirements despite appropriate efforts to do so or because of an extreme emergency,

the commissioner may recommend by February 15, subject to approval of the Legislative Budget Commission, the reduction of an alternate amount of funds from the district's class size categorical allocation.

(d) Upon approval of the reduction calculation in paragraphs (a)-(c), each district shall expend an amount of funds equal to the amount of the reduction calculation in the noncompliant schools to comply with the requirements in subsection (1) as determined at the school average ~~the commissioner must prepare a reallocation of the funds made available for the districts that have fully met the class size requirements~~. ~~The funds shall be reallocated by calculating an amount of up to 5 percent of the base student allocation multiplied by the total district FTE students. The reallocation total may not exceed 25 percent of the total funds reduced.~~

(e) Each district that has not complied with the requirements in subsection (1) as determined at the school average shall submit to the commissioner by February 1 a plan certified by the district school board that describes the specific actions that the district will take in order to fully comply with the requirements in subsection (1) by October of the following school year. The plan shall be posted on the district website and provided to the school advisory committee of all noncompliant schools. A noncompliant school may post the plan on its website ~~If a district submits the certified plan by the required deadline, the funds remaining after the reallocation calculation in paragraph (d) shall be added back to the district's class size categorical allocation based on each qualifying district's proportion of the total reduction for all~~

~~qualifying districts for which a reduction was calculated in paragraphs (a)-(c)~~. ~~However, no district shall have an amount added back that is greater than the amount that was reduced.~~

~~(f) The department shall adjust school district class size reduction categorical allocation distributions based on the calculations in paragraphs (a)-(c).~~

Section 4. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 818
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education) and Senator Garcia
SUBJECT:	Maximum Class Size
DATE:	April 13, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 818 revises the method for calculating the penalty for failure to comply with the class size requirements by calculating the penalty at the school average rather than the classroom level. The bill also revises the penalty calculation to multiply the number of full-time equivalent students in excess of the class size requirements by 50 percent of the base student allocation (BSA) rather than the full base student allocation.

The bill also removes the class size reduction calculation provision that authorizes the Commissioner to reallocate funds from noncompliant school districts to school districts that have fully met the class size requirements. In place of this reallocation, the bill requires that the calculated reduction amount be retained by each noncompliant school district to be expended in the noncompliant schools to comply with the class size requirements as determined at the school average. Noncompliant school districts are required to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

This bill has no impact on state funds. The bill would reduce the initial penalty for schools not in compliance with class size requirements. For the current year, for traditional public schools, the initial penalty for non-compliance was $11.3 million. If the school average had been the standard for compliance along with the use of 50 percent of the BSA, the initial penalty would have been $57,144. According to the Department of Education, schools of choice and charter schools, both

of which are already subject to the school average requirement, would have seen their penalties reduced from $421,513 to $257,000 and from $2.8 million to $1.9 million, respectively, due to revising the base student allocation portion of the penalty calculation to 50 percent.

This bill takes effect on July 1, 2015.

II. Present Situation:

In 2002, voters approved the Class Size Reduction Amendment to Section 1, Article IX of the Florida Constitution.[1] The amendment requires the Legislature to make provisions to ensure that there are a sufficient number of classrooms in Florida so the maximum number of students assigned to each teacher does not exceed:

- 18 students in prekindergarten through grade 3;
- 22 students in grades 4 through 8; and
- 25 students in grades 9 through 12.[2]

Implementation of Class Size Reduction Amendment

In 2003, the Legislature enacted s. 1003.03, F.S., to implement the amendment's requirements.[3] The law required each school district not in compliance with the constitutionally prescribed maximums to annually reduce its average number of students per classroom by two students beginning in 2003-2004 fiscal year.[4] Further, it specified the number of students per classroom is to be measured at the:

- District level for each of the three grade groupings during fiscal years 2003-2006.
- School level for each of the three grade groupings in fiscal years 2006-2009.
- Individual classroom level for each of the three grade groupings in fiscal year 2009-2010 and thereafter.[5]

Currently, the compliance requirements for traditional public schools is calculated at the classroom level.[6]

Charter Schools and Public Schools of Choice

In 2010, the compliance calculation for charter schools was changed from class level average to the school level average.[7] In 2013, the school level average calculation was applied to district

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[1] Office of Program Policy Analysis & Government Accountability, *School Districts are Reducing Class Size in Several Ways; May be able to Reduce Costs*, (May 3007), *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0729rpt.pdf .
[2] Art. IX, s. 1(a) Fla. Const.
[3] Section 2, ch. 2003-391, L.O.F., *codified at* s. 1003.03, F.S.
[4] Section 1003.03, F.S.
[5] Section 2, ch. 2003-391, L.O.F., *codified at* s. 1003.03(2)(b), F.S. (2003).
[6] Each year, on or before the October student membership survey, the maximum number of student assigned to each teacher who is teaching core-curricula courses for prekindergarten through grade 3 may not exceed 18 students, school classrooms for 4-8 may not exceed 22 students, core-curricula courses in 9-12 may not exceed 25 students. *See* ss. 1003.03(1), F.S. and 1002.33(16)(b)3, F.S.
[7] Section 6, ch. 2010-154, L.O.F., *codified at* s. 1002.33(16)(b)3, F.S. (2010).

operated schools of choice.[8] District school boards annually report the number of students attending the various types of public schools of choice, which may include: virtual instruction programs, magnet schools, and public charter school.[9]

Class Size Categorical Reduction Allocation

Traditional public schools have class size limits set in every core-curricula classroom.[10] Class size is measured at the classroom level average and if the district fails to comply with the class size requirements, a portion of the district class size reduction categorical funds are reduced.[11]

Funding

The Class Size Reduction Allocation is funded with state funds in the Florida Education Finance Program (FEFP) based on a factor that compensates school districts for the additional teachers needed to achieve the class sizes of 18, 22, and 25 for grades prekindergarten to 3, 4 to 8, and 9 to 12, respectively.[12] Full funding was achieved by 2009-10 and since then, funds have been adjusted for workload.[13] In 2014-15, total funds are $3 billion.[14]

Compliance – Funding Adjustment

For 2014-15, school districts are required to comply with class size requirements at the classroom level for each of the grade groups.[15] If a district is out of compliance, an initial reduction to the district's class size allocation is calculated by cumulating the excess students in a classroom and then multiplying the total by the class size reduction factor and the base student allocation.[16] The initial penalty was calculated and determined to be $11.3 million for traditional schools.[17]

For charter schools and schools of choice, compliance is measured based on the average class size for each school.[18] Once compliance is determined, the calculation proceeds in the same manner as for traditional schools.[19] The initial penalty was $2.8 million for charter schools and $421,513 for schools of choice for 2014-15.[20]

[8] Florida Department of Education, *2014 Agency Legislative Bill Analysis for HB 319* (2014).
[9] Section 1002.31(4), F.S.
[10] Section 1003.01(14), F.S.
[11] Section 1003.03(4), F.S.
[12] Section 1003.03, F.S.
[13] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[14] *Id.*
[15] Section 1003.03(4), F.S.
[16] *Id.*
[17] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[18] Section 6, ch. 2010-154, L.O.F., *codified at* s. 1002.33(16)(b)3, F.S. (2010).
[19] *Id.*
[20] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.

Following the initial reduction calculation, the Commissioner can review appeals from school districts and make a recommendation to the Legislative Budget Commission for an alternate reduction amount.[21] For 2014-15, the Commissioner's recommendation is based on data errors and unexpected student growth.[22] Following appeals, the Commissioner's alternate penalty recommendation for 2014-15 is $1.3 million for traditional schools, $562,397 for charter schools, and $177,347 for schools of choice.[23] If approved, 25% of the penalty funds will be allocated to compliant districts and schools, and if the noncompliant districts and schools submit a plan to achieve compliance in the following school year, then 75% of the penalty will be waived.[24]

III. Effect of Proposed Changes:

The bill revises the method for calculating the penalty for failure to comply with the class size requirements by performing the calculation at the school average instead of at the classroom level. The bill also revises the penalty calculation to multiply the number of full-time equivalent students in excess of the class size requirements by 50 percent of the BSA rather than the full base student allocation.

Changes to the calculation of full-time equivalent (FTE) students greater than the class size maximums in traditional public schools to be based on school level averages, rather than at the classroom level, will reduce the amount of FTE out of compliance used to calculate the reduction to the class size allocation.[25] Furthermore, the change to the BSA for the penalty calculation will reduce the penalty associated with the FTE that are out of compliance for traditional schools, schools of choice, and charter schools.

The bill removes the class size reduction calculation provision that authorizes the Commissioner to reallocate funds from noncompliant school districts to school districts that have fully met the class size requirements. In place of this reallocation, the bill requires that the calculated reduction amount be retained by each noncompliant school district to be expended in the noncompliant schools to comply with the class size requirements as determined at the school average. Noncompliant school districts are required to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[21] Section 1003.03(4), F.S.
[22] *Id.*
[23] Florida Department of Education, *Budget Amendment Request, FY 2014-2015* (Feb. 2015) on file with the Committee on Education Pre-K – 12 staff.
[24] *Id.*
[25] Florida Department of Education, *2014 Agency Legislative Bill Analysis for HB 319* (July 2014).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 818 has no impact on state funds. The bill would reduce the penalty for schools not in compliance with class size requirements. For the current year, for traditional public schools, the initial penalty for non-compliance was $11.3 million. If the school average had been the standard for compliance along with the use of 50 percent of the BSA, the initial penalty would have been $57,144. According to the Department of Education, schools of choice and charter schools, both of which are already subject to the school average requirement, would have seen their penalties reduced from $421,513 to $257,000 and from $2.8 million to $1.9 million, respectively, due to revising the base student allocation portion of the penalty calculation to 50 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.03 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 9, 2015:
The committee substitute:

- Removes the class size calculation exemption for schools of choice at the school average, since the bill requires all schools to be calculated at the school average.
- Clarifies that the calculated reduction amount for noncompliance with class size requirements be retained by the school district and expended in the noncompliant schools.
- Modifies the charter school and district innovation school of technology class size requirement statutes to conform to the bill's language for traditional public schools.
- Removes the class size provision allowing for the reallocation of funds from noncompliant school districts to compliant school districts.
- Specifies that each noncompliant school district shall expend an amount of funds equal to the amount of the class size reduction calculation in the noncompliant schools to comply with the class size requirements as determined at the school average.
- Requires noncompliant school districts to post their compliance plan on the school district website and provide the plan to the school advisory committee of all noncompliant schools.

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 Garcia

38-01301-15 2015818__

A bill to be entitled

An act relating to maximum class size; amending s. 1003.03, F.S.; requiring the calculation of a school district's class size categorical allocation reduction at the school average when maximum class size requirements are not met; revising the calculation; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(4) ACCOUNTABILITY.—

(a) If the department determines that the number of students assigned to an ~~any~~ individual class exceeds the class size maximum, as required in subsection (1), based upon the October student membership survey, the department shall:

1. ~~Identify, for each grade group, the number of classes in which the number of students exceeds the maximum and the total number of students which exceeds the maximum for all classes.~~

~~2.~~ Determine the number of FTE students which exceeds the maximum for each grade group calculated at the school average.

2.~~3.~~ Multiply the total number of FTE students which exceeds the maximum for each grade group calculated at the school average by the district's FTE dollar amount of the class size categorical allocation for that year and calculate the total for all three grade groups.

3.~~4.~~ Multiply the total number of FTE students which

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

38-01301-15 2015818__

exceeds the maximum for all classes calculated at the school average by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for ~~each of the 2010-2011 through 2013-2014 fiscal years and by an amount equal to the base student allocation adjusted by the district cost differential in~~ the 2015-2016 ~~2014-2015~~ fiscal year and thereafter.

4.~~5.~~ Reduce the district's class size categorical allocation by an amount equal to the sum of the calculations in subparagraphs 2. and 3.~~and 4.~~

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

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

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García
38th District

March 20, 2015

The Honorable Senator Tom Lee
Chair, Appropriations Committee
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This letter should serve as a request to have my bill *SB 818: Maximum Class Size* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38
RG:JT

CC: Cindy Kynoch, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

APRIL 09, 2015
Meeting Date

SB 818
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Maximum Class Size

Name Bob Nave

Job Title Vice President for Research - Florida TaxWatch

Address 106 N. Bronough Street
Street
Tallahassee — *City* | Florida — *State* | 32309 — *Zip*

Phone 850.222.5052

Email bnave@floridataxwatch.org

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Florida TaxWatch

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)

4/9/15
Meeting Date

SB 818
Bill Number (if applicable)

Topic Class Size

Amendment Barcode (if applicable)

Name Nikki Fried

Job Title

Address 3980 W. Broward blvd #215
Street

Plantation Fl 33312
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward School Board

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)

4/9/15
Meeting Date

818
Bill Number (if applicable)

Topic SB818

Amendment Barcode (if applicable)

Name Iraida Mendez-Cartaya

Job Title Assoc. Superintendent

Address 1450 NE 2nd Ave #927
Street

Miami FL 33132
City *State* *Zip*

Phone (3)995-1497

Email imendez@dadeschools.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami Dade County Public Schools

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

04/04/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 818

Meeting Date *Bill Number (if applicable)*

Topic Class size *Amendment Barcode (if applicable)*

Name John Sullivan

Job Title Legislative Liaison

Address 1701 Prudential Drive Phone 305-332-2916

Street

Jacksonville FL 32207 Email John@floridaeducationpolicy.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Duval County Public Schools

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 836
INTRODUCER:	Banking and Insurance Committee and Senator Latvala
SUBJECT:	Florida Insurance Guaranty Association
DATE:	April 8, 2015
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 836 revises provisions governing the Florida Insurance Guaranty Association (FIGA), which provides a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. After an insolvency occurs, the FIGA determines if an assessment is needed to pay claims, administrative costs, or bonds issued by the FIGA and certifies the need for an assessment levy to the Office of Insurance Regulation (OIR). The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies to pay their assessment to the FIGA. Generally, insurers must pay regular assessments within 30 days of the levy, and emergency assessments can be paid in a single payment, or over 12 months, at the option of FIGA. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal.

The bill creates a uniform assessment percentage to be collected from policyholders. The bill authorizes the FIGA to use a monthly installment method for the collection of emergency or regular assessments from insurers in addition to the current pay and recoup method or a combination of both. An insurer that did not write insurance in the prior year is required to pay an assessment based on an estimate of premiums it will write in the assessment year. The bill streamlines the reconciliation of collections and eliminates a regulatory filing with the OIR. The bill codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of the FIGA assessments.

The bill exempts regular assessments from the insurance premium tax, which is expected to have a negative indeterminate fiscal impact. Currently, emergency assessments are exempt from the insurance premium tax.

The bill will have an indeterminate negative impact on state revenues due to the exemption from insurance premium taxes on FIGA assessments.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Florida Insurance Guaranty Association

Part II of ch. 631, F.S., governs the operations of the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, which was created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.[1] Property and casualty insurance companies doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance. When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount the FIGA will cover is $300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to the structure and contents on homeowners' claims, the FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, the FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association.

FIGA Funding and Assessments

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, the FIGA has several potential funding sources. For example, the FIGA receives funds that are available from distributions of the estate of the insolvent insurance company.[2] The FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After an insolvency occurs, the FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Section 631.57(3)(a), F.S., authorizes the FIGA to levy a regular assessment as necessary for up to two percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., which may be levied only to pay covered claims of an insurer that was

[1] Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under chapter 440, F.S., Florida's Workers' Compensation Law.
[2] The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.

rendered insolvent by the effects of a hurricane. At the discretion of the FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at two percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

The procedure used by the FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders is provided in s. 631.57(3), F.S. The procedures listed below are generally the same for regular and emergency assessments:

- The FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by the FIGA.
- The FIGA certifies the need for an assessment levy to the OIR.
- The OIR reviews the certification and, if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay the assessment to the FIGA.
- Insurers must pay regular assessments within 30 days of the levy. Emergency assessments can be either paid in one payment at the end of that month, or spread out over 12 months, at the option of the FIGA.
- For both types of assessments, once an insurance company pays the assessment to the FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal.

An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for one year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a one year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the one year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer’s current policyholder by refunds or premium credits.

Accounting for Assessments

Most insurers authorized to do business in the United States are required by their state regulators to prepare financial statements in accordance with statutory accounting principles (SAP). These principles are tools that assist state insurance departments in the regulation of solvency. The SAP are characterized as a conservative approach since it evaluates liquidity and the ability to pay claims in the future. In contrast, other users of financial information, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP), which attempt to match revenues to expenses. The OIR requires insurers to file annual SAP statements and independently audited financial reports.[3]

[3] Section 624.424, F.S.

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as the FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows the recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.[4] For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset, resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue. Retained earnings are reduced in the year the assessment is paid; however, it is increased the following year as the assessment is recouped from policyholders. The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must be recognized as an admissible asset[5] under SAP, to the extent the receivable is likely to be realized.[6]

Insurance Premium Tax

The premium tax is applied to insurance premiums written in Florida. For purposes of property and casualty insurance premiums, the tax is 1.75 percent on gross premiums less reinsurance and returned premiums.[7] An insurance company may offset their premium tax liability with various credits, deductions, and exemptions. Amounts recouped from policyholders because of a regular assessment by the FIGA relating to an insolvency that occurs on or after July 1, 2010, are considered taxable premium under s. 624.509, F.S.[8] Emergency assessments recouped by insurers are not considered taxable premiums.[9]

III. Effect of Proposed Changes:

The bill significantly revises the assessment process for regular and emergency assessments.

Section 1 amends s. 631.54, F.S., to define "assessment year," as a 12-month period, which may begin on the first day of any calendar quarter, as specified in an order issued by the OIR directing insurers to pay an assessment to the FIGA.

Section 2 amends s. 631.57, F.S. In the OIR order levying the regular or emergency assessment, the bill requires the office to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which may not begin before 90 days after the FIGA certifies such an assessment.

Under the initial or single payment method, insurers are required to make an initial payment to the FIGA before the beginning of the assessment year, on or before the date specified in the

[4] *See* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments,* memorandum to Sandy Robinson at FIGA, December 3. 2013, (on file with the Senate Committee on Banking and Insurance).
[5] As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.
[6] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (Last accessed by Banking and Insurance Committee Staff on February 10, 2015).
[7] Section 624.509, F.S.
[8] Section 631.57(3)(g). F.S.
[9] Section 631.57(3)(e)3., F.S.

order. The initial payment made by insurers that wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated net direct written premium that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's market share for the prior year is used as a basis for determining an insurer's total assessment, and insurers that did not write in the prior year are not subject to the assessment.

Subsequently, insurers are required to file a reconciliation report with the FIGA within 45 days after the end of the assessment year. Insurers must indicate the amount of the initial payment to the FIGA, whether the payment was based on premiums for the prior year or a good faith projection, and the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S., which specifies that knowing, false statements and entries are an unfair insurance trade practice. Insurers are required to complete and submit a payment reconciliation report. If an insurer's collections exceed the initial payment to the FIGA, the insurer would remit the excess amount to the FIGA within 90 days after the end of the assessment year. If an insurer's collections were less than the initial payment to the FIGA, credit would be given to the insurer against future assessments. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy.

As an alternative to the advance payment method described above, the bill authorizes the FIGA to use a monthly installment method for the collection of regular or emergency assessments from policyholders by the insurers. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to the FIGA and subsequently recoup that payment from policyholders. Currently, the FIGA is authorized to use a single payment method or payments over 12 months for emergency assessments. The bill provides the FIGA with the discretion to use the installment plan based on the FIGA's projected cash flow. If the FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for six months, they may recommend a monthly assessment instead of a single payment. In the order levying the assessment, the OIR may specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year. If the assessment is due and payable monthly, the assessment must be a uniform percentage of premium collected from all policyholders with policies in the classes protected by the account. All insurers are required to collect the assessment without regard to whether the insurer reported premium for the prior year.

The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and that this subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholders duty to pay, such assessments. The bill retains the current caps on assessments of two percent for the regular assessment and two percent for the emergency assessment.

The bill authorizes the OIR to defer temporarily any insurer from any regular or temporary assessment if the OIR finds that the insurer is impaired or insolvent. Currently, s. 631.57(4), F.S., provides a limited exception to the assessment. Subject to regulatory approval, an insurer may be exempted from any regular or emergency assessment if an assessment would result in the

insurer's financial statement reflecting an amount of capital or surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.

The bill provides that assessments levied and paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future, which is recognized as an admissible asset under statutory accounting principles,[10] to the extent the receivable is likely to be realized. This codifies the current practice of the OIR. The bill provides that an asset must be established and recorded separately from the liability, regardless of whether it is based on a retrospective or prospective premium-based assessment. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets would be based on the actual premium written offset by the obligation to the FIGA.

The bill provides that assessments are exempt from the premium tax. Currently, emergency assessments are not subject to premium tax, commissions, or fees. The bill also exempts regular assessments from any fees or commissions.

Section 3 amends s. 631.64, F.S., to require the separate disclosures of charges or recoupments on premium statements.

Sections 4 and 5 provide technical, conforming changes.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 836 exempts the regular assessment from insurance premium tax. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact. The assessments occur on an irregular basis,

[10] National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

occurring only eight times between 1994 and 2014. The fiscal year with the largest amount of taxes collected on regular assessments in that period was $6.0 million, with an average fiscal year tax collection amount of $2.1 million (excluding years with zero collections). Out of the last 20 years, there were no assessments in 13 years.

B. Private Sector Impact:

The bill would allow the FIGA to use a single payment, monthly installment plan, or a combination of methods for the collection of regular and emergency assessments. Currently, the FIGA may collect regular or emergency assessments upfront from insurers and the FIGA has the option to collect the emergency assessment over 12 months.

The bill creates a uniform percentage assessment of policyholders. The assessment would apply to insurers writing in the preceding year and new insurers writing insurance as of, or after the date the FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of insurers for the prior year and insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report and a payment reconciliation report with the FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

Advocates of the bill contend that the current assessment mechanism poses a threat to the solvency of property insurers doing business in Florida after a storm. Advocates of the bill state that a monthly payment reduces the risk of insolvency.

The bill exempts the regular assessment from the insurance premium tax.

C. Government Sector Impact:

The bill has an indeterminate negative fiscal impact on state revenues resulting from the insurance premium tax exemption for regular FIGA assessments. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.54, 631.57, 631.64, 627.727, and 631.55.

IX. Additional Information:

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

CS by Banking and Insurance on March 10, 2015:
The CS 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.

By the Committee on Banking and Insurance; and Senator Latvala

597-02115-15 2015836c1

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.54, F.S.; defining the term "assessment year"; amending s. 631.57, F.S.; revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association; specifying conditions under which such assessments are paid; revising procedures and timeframes for the levying of the assessments; revising provisions relating to assessments that are premium and not subject to the premium tax; limiting an insurer's liability for uncollectible emergency assessments; deleting the requirement to file a final accounting report documenting the recoupment; revising an exemption for assessments; amending s. 631.64, F.S.; requiring charges or recoupments to be displayed separately on premium statements to policyholders and prohibiting their inclusion in rates; amending ss. 627.727 and 631.55, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that section to read:

631.54 Definitions.—As used in this part:

(2) "Assessment year" means the 12-month period, which may

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begin on the first day of any calendar quarter, whether January 1, April 1, July 1, or October 1, as specified in an order issued by the office directing insurers to pay an assessment to the association.

Section 2. Subsections (3) and (4) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure ~~the~~ funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer such accounts ~~the same~~, and ~~to the extent necessary~~ to secure ~~the~~ funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of ~~any~~ reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments, in accordance with subparagraphs (f)1. or 2., initially estimated in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan and paragraph (f). Each insurer so assessed shall have at least 30 days' written notice as to the date the initial assessment payment is due and

payable. Every assessment shall be ~~made as~~ a uniform percentage ~~applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made~~. The assessments levied against any insurer may ~~shall~~ not exceed in any one calendar year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account ~~during the calendar year next preceding the date of such assessments~~.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion ~~shall be~~ paid as soon ~~thereafter~~ as funds become available.

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e), constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying the uniform assessment percentage levied by the office to all ~~a separate recoupment factor to the premium of~~ policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f).

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This

amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated or paid to the ~~said~~ association or any of its accounts.

(e)1.~~a.~~ In addition to assessments ~~otherwise~~ authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency

assessments upon insurers holding a certificate of authority. The emergency assessments levied against ~~payable under this paragraph by~~ any insurer may ~~shall~~ not exceed in any one calendar ~~single~~ year more than 2 percent of that insurer's net ~~direct~~ written premiums~~, net of refunds,~~ in this state ~~during the preceding calendar year~~ for the kinds of insurance within the account specified in s. 631.55(2)(b).

2.~~b.~~ ~~Any~~ Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with subparagraph (f) ~~referred to in sub-subparagraph a.~~, upon certification as to the need for such assessments by the board of directors. If ~~In the event~~ the board ~~of directors~~ participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding~~,~~ in ~~such~~ amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments ~~provided for in this paragraph~~ are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds~~,~~ in order ~~to enable such municipality, county, or legal entity~~ to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without ~~the necessity of any~~ further action by the

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association, the office, or any other party. If ~~To the extent~~ bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3.~~c.~~ Emergency assessments used to defease bonds issued under this part ~~paragraph~~ may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by ~~not later than~~ the end of each succeeding month.

4.~~d.~~ If emergency assessments are imposed, the report required by s. 631.695(7) must ~~shall~~ include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

5.~~e.~~ If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must ~~shall~~ include emergency assessments imposed under this paragraph.

6.~~2.~~ If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund

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bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

~~3. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.~~

(f) ~~The recoupment factor applied to policies in accordance with paragraph (c) shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:~~

1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make an initial payment based on the net direct written premium amount from the previous calendar year as set forth in the insurers annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of net direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file a reconciliation report with the association which indicates the amount of the initial payment to

the association before the assessment year, whether such amount was based on net direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected from policyholders an amount which is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e). ~~If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.~~

2. For assessments required under paragraph (a) or paragraph (e), the association may use a monthly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's

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projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a monthly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the monthly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. ~~If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.~~

(g) ~~Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium~~

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~~tax purposes and are not subject to fees or commissions.~~ ~~However,~~ Insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

~~(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.~~

~~(i) No later than 90 days after the insurer or insurer group has completed the recoupment process, the insurer or insurer group shall file with the office, for information~~

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

~~purposes only, a final accounting report documenting the recoupment. The report shall provide the amounts of assessments paid by the insurer or insurer group, the amounts and percentages recouped by year from each affected line of business, and the direct written premium subject to recoupment by year. The insurer or insurer group need submit only one report for all lines of business using the same recoupment factor.~~

(4) The office ~~department~~ may exempt or temporarily defer any insurer from any regular or emergency assessment if the office finds that the insurer is impaired or insolvent or if an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

Section 3. Section 631.64, Florida Statutes, is amended to read:

631.64 Recognition of assessments ~~in rates~~.—Charges or recoupments shall be separately displayed on premium statements to enable policyholders to determine the amount charged for association assessments but may not be included in rates filed and approved by the office. ~~The rates and premiums charged for insurance policies to which this part applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.~~

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

Section 4. Subsection (5) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54~~(6)~~ under ~~the provisions of~~ this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to a ~~any~~ person in settlement of a claim arising under ~~the provisions of~~ this section, the association is not subrogated or entitled to ~~any~~ recovery against the claimant's insurer. The association, however, has the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

Section 5. Subsection (1) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54~~(7)~~ shall be members of the association as a condition of their authority to transact insurance in this state, and, further, as a condition of such authority, an insurer must ~~shall~~ agree to reimburse the association for all claim payments the association makes on the ~~said~~ insurer's behalf if such insurer is subsequently rehabilitated. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all

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

those powers granted or permitted nonprofit corporations, as provided in chapter 617.

Section 6. This act shall take effect July 1, 2015.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1050 (437900)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Montford
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Blizzard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1050 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Changes the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application, and eliminates the $50 per month late charge for late recertification.
- Adds a definition for "vehicle" in ch. 500, F.S., in order to be consistent with the federal Food Safety Modernization Act, and adds definitions for the words "retail" and "wholesale" to clarify the types of food permits the department issues.
- Authorizes the department to sponsor "events," in addition to breakfasts, luncheons, or dinners, in order to promote agriculture and agricultural business products.
- Authorizes the department to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Authorizes the Commissioner of Agriculture to create an Office of Agriculture Technology Services.
- Authorizes the department to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.
- Clarifies the intent of the "Fresh From Florida" marketing brand in order to avoid the misconception that the brand is indicative of inspection for food safety purposes.

- Eliminates the department's power to adopt rules related to negotiating and entering into contracts with advertising agencies, purchasing requirements are covered by Department of Management Services' policies and procedures.
- Changes the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council so that a specific number of people from a particular industry are not required.
- Removes the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. This change deletes the requirement that the owner must destroy or remove the plant within 10 days.
- Eliminates the Florida Forest Service's power to dedicate its land for use by the public as a park. Florida Forest Service lands do not include any state parks, and the Florida Forest Service does not manage any of its land for park purposes.
- Adds definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are programs which are authorized by federal law.
- Replaces every instance of the term "school district" with "district school board in s. 595.404, F.S., relating to the School Nutrition Program."
- Creates a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renames the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."
- Eliminates the need for dealers in agricultural products to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.
- Eliminates the requirement that each grain dealer report monthly to the department the value of grain it received from producers for which the producers have not received payment.
- Requires the Board of Trustees of the Internal Improvement Trust Fund to deed certain property to the department. The department is directed to sell a portion of the property and develop a plan to expend the proceeds at the Bronson Animal Disease Diagnostic Laboratory in Osceola County.

The bill has an insignificant impact on state revenues and expenditures.

The bill is effective July 1, 2015.

II. Present Situation:

This section topically describes the present situation and the bill's impact on each. See Section III., for a section-by-section analysis of the bill's provisions.

Limited Certification for Urban Landscape Commercial Fertilizer Application

Section 482.1562, F.S., outlines the application requirements to receive a Limited Commercial Fertilizer Certification. Renewals are required every four years. For those who hold a limited

license, recertification applications must be submitted 90-days prior to expiration of the current license. If the renewal application is not received 60 days prior to the expiration date, a late fee of $50 is assessed in addition to the $25 renewal fee. In order to renew a Limited Commercial Fertilizer Certificate, the cost may be as much as $75. A new license is $25. The bill removes the late fee and allow certificate holders 30 days to renew their licenses. This process is consistent with other certifications under ch. 482, F.S.

Powers and Duties of the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) is empowered by the Legislature to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida's agricultural products to the consuming public. Section 570.07(20)(c), F.S., is somewhat limiting because it only refers to trade breakfasts, luncheons, and dinners for possible sponsorship opportunities. Adding the word "events" ensures that the department is covered by the types of sponsorships it will be able to provide so that it may continue to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products.

Currently, the department does not have enforcement capabilities regarding the misuse of the "Fresh From Florida" logo. The bill gives the department the same authority as the Department of Citrus, state universities, and others to enforce the trademarks and copyrights it obtains on behalf of the state. This language clarifies the authority of the department with regard to its ability to obtain and enforce rights in intellectual property created and utilized by the department. This authority is needed to ensure, as the "Fresh From Florida" mark becomes more popular, that the department can take immediate action to stop its misuse. Without this authority, valuable time could be lost by having to educate the Department of State, the agency currently holding this responsibility for the state, about the consequences of the misuse of the "Fresh From Florida" mark. The direct enforcement capability by the department will result in faster and more cost effective enforcement.

Currently, the Division of Administration is responsible for "providing electronic data processing and management information systems support for the department." The Office of Agriculture Technology Services proposes to establish the office as a stand-alone office under the supervision of a senior manager within ch. 570, F.S. This change paves the way for continued implementation of the department's information technology strategic plan.

Pest Control Trust Fund

Section 482.2401, F.S. restricts the use of funds to carry out the provisions of ch. 482, F.S. This prevents resources funded in ch. 482, F.S., from being used to conduct work for other programs, which is problematic when functions across programs are combined within a work unit, such as licensing or inspections. Prior to the reorganization of the Division of Agriculture Environmental Services (AES), the work units were separate for each statutory area. The re-organization streamlined these units. The bill authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (ch. 482, F.S.). The

powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing and regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2018.

Division of Food Safety

Section 570.50(5), F.S., authorizes the Division of Food Safety to analyze food and animal feed samples for chemical residues as required under the adulteration sections of ch. 500 and ch. 580, F.S. The primary effect of the proposed change is to fully characterize the current actions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that might be harmful to humans or animals. Along with potential chemical adulterants, there is concern with microbiological and physical adulteration of food or feed products. The department already performs these activities as a service to the Divisions of Agriculture Environmental Services and Animal Industry, as well as part of the Food and Drug Administration's (FDA) surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to ch. 502, F.S., to the current statute and striking the reference to chemical residues, the department is able to fully encompass the activities performed in the Division of Food Safety laboratories.

Division of Marketing and Development

Currently, Agriculture Dealer's licenses are issued through the Division of Marketing. For efficiency purposes, the bill moves the duties associated with issuing Agriculture Dealer's Licenses to the Division of Consumer Services, which already has the same duties for several other licenses. The Division of Marketing also is currently tasked with regulating livestock markets. The bill tasks responsibility of regulating livestock markets to the department rather than to a specific division.

Florida Agricultural Promotional Campaign Advisory Council

Section 571.28, F.S., creates the membership of the Florida Agricultural Promotional Campaign Advisory Council. The membership must include six members representing agricultural producers, shippers, or packers; three members representing agricultural retailers; two members representing agricultural associations; one member representing a wholesaler of agricultural products; one member representing consumers; and one member representing the department. The bill allows members to be selected without regard for a specific number from each category of business, but rather an overall representation of the major business components important to the business of agriculture.

Notice of Infection of Plants and Destruction

Section 581.181, F.S., does not allow for discretion in determining when it is necessary to take immediate action to remove and destroy a noxious, infested or infected plant or plant product. The bill gives the department flexibility to determine if it is necessary to invoke procedures for immediate action for the cause of removal and destruction of a noxious plant, non-noxious plant, or plant product infested or infected with a pest or disease. For example, noxious plants, plant pests, or plant diseases that are well-established in Florida and are not under a department

eradication or control program may not justify requiring immediate action to eliminate or otherwise mitigate.

School Food and Nutrition Service Program

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes the department to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.

Schools must apply through the department and complete certain requirements prior to the operation of a school nutrition program. Once approved, the department reimburses the schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Chapter 595, F.S., does not contain definitions for "school breakfast program," "summer nutrition program," or "universal school breakfast program." The bill adds these definitions to specify that they are the programs authorized by federal law. The department administers more than one United States Department of Agriculture summer nutrition program. The bill amends the definition of "summer nutrition programs" to specify that certain requirements apply to all summer nutrition programs.

Currently, the department must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. Further, the department may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program. There is no restriction on when or for which program the funds may be advanced. The bill clarifies that the department does not just make efforts to, but actually ensures through its processes and procedures that all eligible severe need schools receive the higher rate of reimbursement. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. The bill also clarifies that the department will only advance funds when requested by sponsors of the Summer Food Service Program.

Florida Farm to Schools Program

Section 595.406, F.S., provides for implementation of the Florida Farm Fresh Schools Program. The program was instituted in 2010 to require the Florida Department of Education to work with the department to increase the presence of Florida-grown products into schools. When the administration of the school nutrition programs was transferred to the department, this program

became part of the Florida Farm to School Program, which was already being administered by the department. The bill replaces all references to the "Florida Farm Fresh Schools Program" with the "Florida Farm to School Program." This allows for consistent messaging and marketing around the department's efforts as stated in the statute. Further changes will allow the department to recognize those sponsors who have purchased 10 percent of the food they serve from the Florida Farm to School Program.

Children's Summer Nutrition Program

Section 595.407, F.S., requires all school districts to develop a plan to sponsor a summer nutrition program to operate within five miles of at least one elementary school where 50 percent or more of the students are eligible for free or reduced prices meals for 35 consecutive days, and also within 10 miles of each elementary school where 50 percent or more of the students are eligible for free or reduced-price meals. The bill specifies that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades K-5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to the department, interpretation of this statute has varied greatly. This change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.

The bill remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. This allows school districts to exclude holidays and weekends.

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Currently, any agricultural dealer who is engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative is required to obtain a bond or certificate of deposit (CD), as required in s. 604.20(1) F.S. If a CD is the chosen form of security, the dealer is required to furnish the department the CD or a CD receipt, a bank's acknowledgement letter and an assignment of CD. The bill eliminates the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgement that the agreement has been properly recorded.

Each grain dealer must report to the department monthly the value of grain it received from producers for which the producers have not received payment. This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers. The bill eliminates the requirement that each grain dealer report monthly to the department, as only three of the four licensed dealers are required to do so. The dealers will continue to be licensed and bonded which allows the department to request information from dealers in the event of a complaint or suspected malpractice.

Bronson Animal Disease Diagnostic Laboratory

The Division of Animal Industry is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases. Section 585.61, F.S., establishes the Bronson Animal Disease Diagnostic Laboratory (lab) located in Osceola County. The lab complex is located on property deeded to the Board of Trustees of the Internal Improvement Trust Fund.

III. Effect of Proposed Changes:

Section 1 amends s. 482.1562, F.S., to change the deadline for submitting a recertification application for a current limited certification for urban landscape commercial fertilizer application. The bill requires the application to be submitted four years after the date of issuance and eliminates the $50 per month late charge for late recertification.

Section 2 amends s. 500.03, F.S., to include a definition for the word "vehicle" in order to be consistent with the federal Food Safety Modernization Act. It also adds definitions for the words "retail" and "wholesale" to clarify the types of food permits that the department issues.

Section 3 amends s. 570.07, F.S., to authorize the department to sponsor "events," in addition to trade breakfasts, luncheons, and dinners, to promote agriculture and agricultural business products. It also authorizes the department to secure letters of patent, copyrights, and trademarks on any work product of the department and accordingly to enforce its rights.

Section 4 amends s. 570.30, F.S., to remove electronic data processing and management information systems support as a duty for the Department of Agriculture and Consumer Services' (department) Division of Administration.

Section 5 amends s. 570.441, F.S., to authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services. This subsection expires June 30, 2018.

Section 6 amends s. 570.50, F.S., to fully characterize the current functions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that might be harmful to humans or animals. Along with potential chemical adulterants, concerns exist with microbiological and physical adulteration of food or feed products. These are activities that the division already performs for other divisions, as well as part of FDA surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to ch. 502, F.S., the department will be able to fully encompass the activities performed in the Division of Food Safety's labs.

Section 7 amends s. 570.53, F.S., to remove enforcement of provisions relating to dealers in agricultural products from the duties of the Division of Marketing and Development. The Division of Marketing is currently tasked with regulating livestock markets.

Section 8 amends s. 570.544, F.S., to move issuance of Agriculture Dealer's Licenses from the Division of Marketing and Development to the Division of Consumer Services, which already issues several other licenses. It also requires the department, rather than a specific division, to regulate Live Stock Markets

Section 9 creates s. 570.68, F.S., to create the Office of Agriculture Technology Services to provide electronic data processing and agency information technology services to the department.

Section 10 amends s. 570.681, F.S., to clarify legislative findings with regard to the Florida Agriculture Center and Horse Park.

Section 11 amends s. 570.685, F.S., to authorize the department to provide staff and meeting space for the Florida Agriculture Center and Horse Park Authority.

Section 12 amends s. 571.24, F.S., to clarify the intent of the Florida Agricultural Promotional Campaign as a marketing program. It removes an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council.

Section 13 amends s. 571.27, F.S., to remove obsolete provisions relating to the department's authority to adopt rules related to negotiating and entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign.

Section 14 amends s. 571.28, F.S., to change the membership criteria for the Florida Agricultural Promotional Campaign Advisory Council, so that a specific number of people from a particular industry are not required.

Section 15 amends s. 581.181, F.S., to remove the requirement that the department notify a property, owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. With this change, the owner will not be required to destroy or remove the plant within 10 days.

Section 16 repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. The bill repeals this section because the Florida Forest Service does not acquire or have lands for "park purposes." The department acquires forest land for multi-use purposes.

Section 17 amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that these programs are authorized by federal law.

Section 18 amends s. 595.404, F.S., to clarify requirements for the School Nutrition Program. The bill creates a duty for each school district to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. It specifies that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. The bill also requires the

department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs.

Section 19 amends s. 595.405, to replace every instance of the term "school district" with "district school board." It rewrites the provisions of this section, which specifies that each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. The bill also provides criteria for when a universal school breakfast program must be provided. The reorganizing of the section combines several subsections and removes conflicting and duplicative clauses, so that the section is easier to read, interpret, and apply.

Section 20 amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." The bill authorizes the department to recognize sponsors who purchase at least ten percent of the food they serve from the Florida Farm to School Program.

Section 21 amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades kindergarten through 5, not just elementary schools. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends.

Section 22 amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.

Section 23 amends s. 595.501, F.S., to require sponsors to complete corrective action plans, required by the department or a federal agency, so that they are in compliance with school food and nutrition service programs. This amendment removes the requirements for corrective action plans from s. 595.405, F.S., and place them within this section.

Section 24 amends s. 595.601, F.S., to correct a cross-reference.

Section 25 amends s. 604.20, F.S., to remove a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution.

Section 26 amends s. 604.33, F.S., to remove provisions requiring grain dealers to submit monthly reports. The bill authorizes rather than requires the department to make at least one spot check annually of each grain dealer.

Section 27 directs the Board of Trustees of the Internal Improvement Trust Fund to deed certain property located in Osceola County to the department on or before December 31, 2015. The department is directed to sell a portion of the property for no less than appraised value and deposit the proceeds into the General Inspection Trust Fund. The bill requires the department to develop a plan to expend the proceeds for facility repair and construction at the Bronson Animal

Disease Diagnostic Laboratory and requires the plan to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

Section 28 provides that this act shall take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private Sector Impact Section.

B. Private Sector Impact:

PCS/SB 1050 eliminates the $50 late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on persons who apply commercial fertilizer by eliminating a fee.

The bill eliminates certain financial assurance and licensing requirements for dealers in agricultural products and for grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The bill creates an exemption from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated by the Department of Agriculture and Consumer Services (department). This may have a positive impact on those who own the plant or plant products infested with pests or noxious weeds by not requiring the owners to destroy them.

C. Government Sector Impact:

Eliminating the $50 late fee for a limited certification for urban landscape commercial fertilizer application appears to have an insignificant negative impact on state government revenues. The fee was first established by ch. 2009-199, Laws of Florida. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape is required to be certified. The certification is good for four years from the date of issuance; therefore, no late fees have been assessed.

The bill has an insignificant impact associated with the creation of s. 570.68, F.S., which creates the Office of Agriculture Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is a retiree of the state retirement system who has been reemployed and is not eligible to participate in a state administered retirement system. The state contributes a set amount to the state retirement account for employees ineligible to earn a second retirement. The current retirement contribution rate for an ineligible employee in a regular class is 3.80%; the contribution rate for an ineligible employee in a senior management class is 16.30%. Changing the department's current Chief Information Officer to a senior management class will result in an additional annual state retirement contribution of $11,795 from general revenue. The department will manage the additional costs within existing salary and benefit resources.

The bill directs the department to sell a portion of property in Osceola County and deposit the proceeds into the General Inspection Trust Fund. Subject to appropriation from the Legislature, the department is required to expend the proceeds for facility repairs and construction at the Bronson Animal Disease Diagnostic Laboratory located in Osceola County. The proceeds from the sale of the property are indeterminate. The department estimates expenditures related to the lab repairs and construction will be offset by the revenues received from the sale of the property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 482.1562, 500.03, 570.07, 570.30, 570.441, 570.50, 570.53, 570.544, 570.681, 570.685, 571.24, 571.27, 571.28, 581.181, 595.402, 595.404, 595.405, 595.406, 595.407, 595.408, 595.501, 595.601, 604.20, and 604.33.

This bill creates section 570.68 of the Florida Statutes.

This bill repeals section 589.26 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on General Government on March 17, 2015:
The committee substitute:

- Restores provisions requiring the Department of Agriculture and Consumer Services to give certain priority consideration when evaluating agriculture education and promotion facilities.
- Directs the Board of Trustees of the Internal Improvement Trust Fund to deed certain property located in Osceola County to the department by December 31, 2015.
- Requires the department to sell a portion of the property and develop a plan to expend the proceeds from the sale for repairs and construction of an agricultural diagnostic laboratory.

B. Amendments:

None.

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

852090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 113 and 114
insert:
Section 1. Section 15.0521, Florida Statutes, is created to read:
15.0521 Official state honey.—Tupelo honey is designated as the official Florida state honey.

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

852090

And the title is amended as follows:

Delete line 3

and insert:

Consumer Services; creating s. 15.0521, F.S.; designating tupelo honey as the official state honey; amending s. 482.1562, F.S.;

565886

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
	.	
	.	
	.	

The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 657 - 675

and insert:

is currently leased to the Department of Agriculture and Consumer Services. Notwithstanding chapters 253 and 259, Florida Statutes, the Board of Trustees of the Internal Improvement Trust Fund is directed to sell a portion of such property described as the land lying south of Carroll Street in Osceola County described as the north half of the northeast quarter of

565886

the southwest quarter of Section 9, Township 25 South, Range 29 East for not less than the property's appraised value. All net proceeds from the sale shall be deposited into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services. The department shall develop a plan to use the net proceeds for facility repairs and construction of an agricultural diagnostic laboratory at the Bronson Animal Disease Diagnostic Laboratory located in Osceola County. The plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

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

And the title is amended as follows:

Delete lines 98 - 107

and insert:

check annually of each grain dealer; directing the Board of Trustees of the Internal Improvement Trust Fund to sell a portion of specified property; requiring that the proceeds of such sale be deposited into the General Inspection Trust Fund of the department; directing the department to develop a plan to use the proceeds for facility repairs and construction of an agricultural diagnostic laboratory; requiring the


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576-02433-15

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

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 482.1562, F.S.; clarifying the date by which an application for recertification of a limited certification for urban landscape commercial fertilizer application is required; removing provisions imposing late renewal charges; providing a grace period for such recertification; amending s. 500.03, F.S.; defining terms relating to the Florida Food Safety Act; amending s. 570.07, F.S.; revising powers and duties of the department to include sponsoring events; authorizing the department to secure letters of patent, copyrights, and trademarks on work products and to engage in acts accordingly; amending s. 570.30, F.S.; removing electronic data processing and management information systems support for the department as a power and duty of the Division of Administration; amending s. 570.441, F.S.; authorizing the use of funds in the Pest Control Trust Fund for activities of the Division of Agricultural Environmental Services; amending s. 570.50, F.S.; revising powers and duties of the Division of Food Safety to include analyzing milk, milk products, and frozen desserts offered for sale in the state; amending s. 570.53, F.S.; revising duties of the Division of Marketing and Development to remove


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enforcement of provisions relating to dealers in agricultural products; amending s. 570.544, F.S.; revising duties of the director of the Division of Consumer Services to include enforcement of provisions relating to dealers in agricultural products and grain dealers; creating s. 570.68, F.S.; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; providing duties of the office; amending s. 570.681, F.S.; clarifying legislative findings with regard to the Florida Agriculture Center and Horse Park; amending s. 570.685, F.S.; authorizing rather than requiring the department to provide administrative and staff support services, meeting space, and record storage for the Florida Agriculture Center and Horse Park Authority; amending s. 571.24, F.S.; clarifying the intent of the Florida Agricultural Promotional Campaign as a marketing program; removing an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council; amending s. 571.27, F.S.; removing obsolete provisions relating to the authority of the department to adopt rules for entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign; amending s. 571.28, F.S.; revising provisions specifying membership criteria of the Florida Agricultural Promotional Campaign Advisory Council; amending s. 581.181, F.S.; providing

applicability of provisions requiring treatment or destruction of infested or infected plants and plant products; repealing s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate and reserve state park lands for public use; amending s. 595.402, F.S.; defining terms relating to the school food and nutrition service program; amending s. 595.404, F.S.; revising duties of the department with regard to the school food and nutrition service program; directing the department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs; amending s. 595.405, F.S.; clarifying requirements for the School Nutrition Program; providing for breakfast meals to be available to all students in schools that serve any combination of grades kindergarten through 5; amending s. 595.406, F.S.; renaming the "Florida Farm Fresh Schools Program" as the "Florida Farm to School Program"; authorizing the department to establish by rule a recognition program for certain sponsors; amending s. 595.407, F.S.; revising provisions of the children's summer nutrition program to include certain schools that serve any combination of grades kindergarten through 5; revising provisions relating to the duration of the program; authorizing school districts to exclude holidays and weekends; amending s. 595.408, F.S.; conforming references to changes made by the act; amending s. 595.501, F.S.; requiring entities to

complete corrective action plans required by the department or a federal agency to be in compliance with school food and nutrition service programs; amending s. 595.601, F.S.; correcting a cross-reference; amending s. 604.20, F.S.; removing a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution; amending s. 604.33, F.S.; removing provisions requiring grain dealers to submit monthly reports; authorizing rather than requiring the department to make at least one spot check annually of each grain dealer; requiring certain property to be deeded to the Department of Agriculture and Consumer Services by a certain date; requiring the department to sell a portion of the deeded property; requiring the proceeds from the sale to be deposited into a specified trust fund; requiring the department to develop a plan to use the net proceeds from the sale for facility repairs and construction of an agricultural diagnostic laboratory at the Bronson Animal Disease Diagnostic Laboratory; requiring the plan to be submitted to the Governor and the Legislature by a certain date; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 482.1562,

Florida Statutes, are amended to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(5) An application for recertification must be made 4 years after the date of issuance ~~at least 90 days before the expiration~~ of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) ~~A late renewal charge of $50 per month shall be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date.~~ Upon expiration, or after a grace period which does not exceed 30 days after expiration, a certificate may be issued only upon reapplying in accordance with subsection (3).

Section 2. Present paragraph (bb) of subsection (1) of section 500.03, Florida Statutes, is redesignated as paragraph (cc), and a new paragraph (bb) and paragraphs (dd) and (ee) are added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(bb) "Retail" means the offering of food directly to the consumer.

(dd) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another,

including, but not limited to, carts, vans, trucks, cars, trains and railway transport, and aircraft and watercraft type transport.

(ee) "Wholesale" means the offering of food to businesses for resale.

Section 3. Paragraph (c) of subsection (20) of section 570.07, Florida Statutes, is amended, and subsection (44) is added to that section, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(20)

(c) To sponsor events, trade breakfasts, luncheons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.

The department is authorized to receive and expend donations contributed by private persons for the purpose of covering costs associated with the above described activities.

(44) The department may, in its own name:

(a) Perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products of the department and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture

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or use of such department work products on a royalty basis or for such other consideration as the department shall deem proper.

(c) Take any action necessary, including legal action, to protect such department work products against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due to the department for the manufacture or use of such department work products by another party.

(e) Sell any of such department work products and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties conferred upon the department by this section, including adopting rules, as necessary, in order to administer this section.

Section 4. Subsection (5) of section 570.30, Florida Statutes, is amended, to read:

570.30 Division of Administration; powers and duties.—The Division of Administration shall render services required by the department and its other divisions, or by the commissioner in the exercise of constitutional and cabinet responsibilities, that can advantageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The duties of this division include, but are not limited to:

~~(5) Providing electronic data processing and management information systems support for the department.~~

Section 5. Subsection (4) is added to section 570.441, Florida Statutes, to read:

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570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), moneys collected or received by the department under chapter 482 may be used to carry out the provisions of s. 570.44. This subsection expires June 30, 2018.

Section 6. Subsection (5) of section 570.50, Florida Statutes, is amended to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(5) Analyzing food and feed samples offered for sale in the state ~~for chemical residues~~ as required under the adulteration sections of chapters 500, 502, and 580.

Section 7. Subsection (2) of section 570.53, Florida Statutes, is amended to read:

570.53 Division of Marketing and Development; powers and duties.—The powers and duties of the Division of Marketing and Development include, but are not limited to:

~~(2) Enforcing the provisions of ss. 604.15-604.34, the dealers in agricultural products law, and ss. 534.47-534.53.~~

Section 8. Subsection (2) of section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(2) The director shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce the provisions of ss. 604.15-604.34 and chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.

Section 9. Section 570.68, Florida Statutes, is created to read:

570.68 Office of Agriculture Technology Services.—The commissioner may create an Office of Agriculture Technology Services under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The office shall provide electronic data processing and agency information technology services to support and facilitate the functions, powers, and duties of the department.

Section 10. Section 570.681, Florida Statutes, is amended to read:

570.681 Florida Agriculture Center and Horse Park; legislative findings.—It is the finding of the Legislature that:

~~(1) Agriculture is an important industry to the State of Florida, producing over $6 billion per year while supporting over 230,000 jobs.~~

(1) ~~(2)~~ Equine and other agriculture-related industries ~~will~~ strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.

(2) ~~(3)~~ The ~~A~~ Florida Agriculture Center and Horse Park provides ~~will provide~~ Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

(3) ~~(4)~~ Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows ~~will allow~~ this facility to utilize experts and generate revenue from many areas to ensure the success of this facility.

Section 11. Paragraphs (b) and (c) of subsection (4) of section 570.685, Florida Statutes, are amended to read:

570.685 Florida Agriculture Center and Horse Park Authority.—

(4) The authority shall meet at least semiannually and elect a chair, a vice chair, and a secretary for 1-year terms.

(b) The department may provide ~~shall be responsible for providing~~ administrative and staff support services relating to the meetings of the authority and may ~~shall~~ provide suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting, which shows ~~record shall show~~ the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 12. Section 571.24, Florida Statutes, is amended to read:

571.24 Purpose; duties of the department.—The purpose of this part is to authorize the department to establish and coordinate the Florida Agricultural Promotional Campaign, which is intended to serve as a marketing program to promote Florida agricultural commodities, value-added products, and agricultural related businesses and not a food safety or traceability program. The duties of the department shall include, but are not limited to:

(1) Developing logos and authorizing the use of logos as provided by rule.

(2) Registering participants.

(3) Assessing and collecting fees.

(4) Collecting rental receipts for industry promotions.

(5) Developing in-kind advertising programs.

(6) Contracting with media representatives for the purpose of dispersing promotional materials.

(7) Assisting the representative of the department who serves on the Florida Agricultural Promotional Campaign Advisory Council.

~~(8) Designating a division employee to be a member of the Advertising Interagency Coordinating Council.~~

(8) ~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(9) ~~(10)~~ Enforcing and administering the provisions of this part, including measures ensuring that only Florida agricultural or agricultural based products are marketed under the "Fresh From Florida" or "From Florida" logos or other logos of the Florida Agricultural Promotional Campaign.

Section 13. Section 571.27, Florida Statutes, is amended to read:

571.27 Rules.—The department is authorized to adopt rules that implement, make specific, and interpret the provisions of this part~~, including rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign. Such rules shall establish the procedures for negotiating costs with the offerors of such advertising services who have been determined by the department to be qualified on the basis of technical merit, creative ability, and professional competency. Such~~

~~determination of qualifications shall also include consideration of the provisions in s. 287.055(3), (4), and (5)~~. The department is further authorized to determine, by rule, the logos or product identifiers to be depicted for use in advertising, publicizing, and promoting the sale of Florida agricultural products or agricultural-based products in the Florida Agricultural Promotional Campaign. The department may also adopt rules consistent ~~not inconsistent~~ with ~~the provisions of~~ this part as in its judgment may be necessary for participant registration, renewal of registration, classes of membership, application forms, and ~~as well as~~ other forms and enforcement measures ensuring compliance with this part.

Section 14. Subsection (1) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(1) ORGANIZATION.—There is ~~hereby~~ created within the department the Florida Agricultural Promotional Campaign Advisory Council, to consist of 15 members appointed by the Commissioner of Agriculture for 4-year staggered terms. The membership shall include: 13 ~~six~~ members representing agricultural producers, shippers, ~~or~~ packers, ~~three members representing agricultural~~ retailers, ~~two members representing~~ agricultural associations, and wholesalers ~~one member representing a wholesaler~~ of agricultural products, one member representing consumers, and one member representing the department. Initial appointment of the council members shall be four members to a term of 4 years, four members to a term of 3 years, four members to a term of 2 years, and three members to a

term of 1 year.

Section 15. Subsection (3) is added to section 581.181, Florida Statutes, to read:

581.181 Notice of infection of plants; destruction.—

(3) This section does not apply to plants or plant products infested with pests or noxious weeds that are determined to be widely established within the state and are not specifically regulated under other sections of statutes or rules adopted by the department.

Section 16. Section 589.26, Florida Statutes, is repealed.

Section 17. Present subsections (4) and (5) of section 595.402, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) and subsections (7) and (8) are added to that section, to read:

595.402 Definitions.—As used in this chapter, the term:

(4) "School breakfast program" means a program authorized by section 4 of the Child Nutrition Act of 1966 and administered by the department.

(7) "Summer nutrition program" means one or more of the programs authorized under 42 U.S.C. s. 1761.

(8) "Universal school breakfast program" means a program that makes breakfast available at no cost to all students regardless of their household income.

Section 18. Subsections (5) and (12) of section 595.404, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

595.404 School food and nutrition service program; powers and duties of the department.—The department has the following powers and duties:

(5) To provide ~~make a reasonable effort to ensure that any school designated as~~ a "severe need school" ~~receives~~ the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(12) To advance funds from the program's annual appropriation to a summer nutrition program sponsor~~s~~, when requested, in order to implement the provisions of this chapter and in accordance with federal regulations.

(13) To collect data on food purchased through the programs defined in ss. 595.402(3) and 595.406 and to publish that data annually.

Section 19. Section 595.405, Florida Statutes, is amended to read:

595.405 School Nutrition Program requirements ~~for school districts and sponsors~~.—

(1) Each ~~school~~ district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition service program for students consistent with federal law and department rules.

(2) Each ~~school~~ district school board shall implement school breakfast programs that make breakfast meals available to all students in each ~~elementary~~ school that serves any combination of grades kindergarten through 5. ~~Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be~~

~~limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.~~

(3) Each ~~school~~ district school board must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

~~(4) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. Each school district shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal, free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.~~

(4) ~~(5)~~ Each ~~elementary, middle, and high~~ school operating a breakfast program shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(5) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or

reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides to not implement such a program in such schools.

(6) To increase school breakfast and universal school breakfast program participation, each school district must, to the maximum extent practicable, make breakfast meals available to students through alternative service models as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.

(7) ~~(6)~~ Each ~~school~~ district school board shall annually provide ~~to all students in each elementary, middle, and high school~~ information prepared by the district's food service administration regarding available ~~its~~ school breakfast programs. The information shall be communicated through school announcements and ~~written~~ notices sent to all parents.

(8) ~~(7)~~ A ~~school~~ district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

~~(8) Each sponsor shall complete all corrective action plans required by the department or a federal agency to be in compliance with the program.~~

Section 20. Section 595.406, Florida Statutes, is amended to read:

595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

(1) In order to implement the Florida Farm to School ~~Fresh Schools~~ Program, the department shall develop policies

pertaining to school food services which encourage:

(a) Sponsors to buy fresh and high-quality foods grown in this state when feasible.

(b) Farmers in this state to sell their products to sponsors, school districts, and schools.

(c) Sponsors to demonstrate a preference for competitively priced organic food products.

(d) Sponsors to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(2) The department shall provide outreach, guidance, and training to sponsors, schools, school food service directors, parent and teacher organizations, and students about the benefit of fresh food products from farms in this state.

(3) The department may recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program.

Section 21. Subsection (2) of section 595.407, Florida Statutes, is amended to read:

595.407 Children's summer nutrition program.—

(2) Each school district shall develop a plan to sponsor or operate a summer nutrition program to operate sites in the school district as follows:

(a) Within 5 miles of at least one ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 ~~consecutive~~ days between the end of the school year and the beginning of the next school year. School districts may exclude

holidays and weekends.

(b) Within 10 miles of each ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals, except as operated pursuant to paragraph (a).

Section 22. Section 595.408, Florida Statutes, is amended to read:

595.408 Food ~~Commodity~~ distribution services; department responsibilities and functions.—

(1)(a) The department shall conduct, supervise, and administer all food ~~commodity~~ distribution services that will be carried on using federal or state funds, or funds from any other source, or food ~~commodities~~ received and distributed from the United States or any of its agencies.

(b) The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each applicant or recipient is a resident of this state and a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department may:

(a) Accept any duties with respect to food ~~commodity~~

distribution services as are delegated to it by an agency of the federal government or any state, county, or municipal government.

(b) Act as agent of, or contract with, the federal government, state government, or any county or municipal government in the administration of food ~~commodity~~ distribution services to secure the benefits of any public assistance that is available from the federal government or any of its agencies, and in the distribution of funds received from the federal government, state government, or any county or municipal government for food ~~commodity~~ distribution services within the state.

(c) Accept from any person or organization all offers of personal services, food ~~commodities~~, or other aid or assistance.

(4) This chapter does not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 23. Section 595.501, Florida Statutes, is amended to read:

595.501 Penalties.—

(1) When a corrective action plan is issued by the department or a federal agency, each sponsor is required to complete the corrective action plan to be in compliance with the program.

(2) Any person or~~,~~ sponsor~~, or school district~~ that violates any provision of this chapter or any rule adopted thereunder or otherwise does not comply with the program is subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This section does not restrict the

applicability of any other law.

Section 24. Section 595.601, Florida Statutes, is amended to read:

595.601 Food and Nutrition Services Trust Fund.—Chapter 99-37, Laws of Florida, recreated the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department as authorized in s. 595.404 ~~595.405~~.

Section 25. Subsection (1) of section 604.20, Florida Statutes, is amended to read:

604.20 Bond or certificate of deposit prerequisite; amount; form.—

(1) Before any license is issued, the applicant ~~therefor~~ shall make and deliver to the department a surety bond or certificate of deposit in the amount of at least $5,000 or in such greater amount as the department may determine. No bond or certificate of deposit may be in an amount less than $5,000. The penal sum of the bond or certificate of deposit to be furnished to the department by an applicant for license as a dealer in agricultural products shall be in an amount equal to twice the dollar amount of agricultural products handled for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the month of maximum transaction in such products during the preceding 12-month period. An applicant for license who has not handled agricultural products for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the preceding 12-month period shall furnish a bond or certificate of deposit in an amount equal to twice the estimated dollar amount of such agricultural products to be

handled, by purchase or otherwise, during the month of maximum transaction during the next immediate 12 months. Such bond or certificate of deposit shall be provided or assigned in the exact name in which the dealer will conduct business subject to ~~the provisions of~~ ss. 604.15-604.34. Such bond must be executed by a surety company authorized to transact business in the state. For the purposes of ss. 604.19-604.21, the term "certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States. A ~~No~~ certificate of deposit may not be accepted in connection with an application for a dealer's license unless the issuing institution is properly insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Such bond or any certificate of deposit assignment or agreement shall be upon a form prescribed or approved by the department and shall be conditioned to secure the faithful accounting for and payment, in the manner prescribed by s. 604.21(9), to producers or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer and to secure payment to dealers who sell agricultural products to such dealer. Such bond or certificate of deposit assignment or agreement shall include terms binding the instrument to the Commissioner of Agriculture. A certificate of deposit shall be presented with an assignment of applicant's rights in the certificate in favor of the Commissioner of Agriculture on a form prescribed by the department ~~and with a letter from the issuing institution~~ acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the

issuing institution. Such assignment shall be irrevocable while the dealer's license is in effect and for an additional period of 6 months after the termination or expiration of the dealer's license, if a ~~provided no~~ complaint is not pending against the licensee. If a complaint is pending, the assignment shall remain in effect until all actions on the complaint have been finalized. The certificate of deposit may be released by the assignee of the financial institution to the licensee or the licensee's successors, assignee, or heirs if ~~no~~ claims are not pending against the licensee before the department at the conclusion of 6 months after the last effective date of the license. A ~~No~~ certificate of deposit which ~~shall be accepted that~~ contains any provision that would give the issuing institution any prior rights or claim on the proceeds or principal of such certificate of deposit may not be accepted. The department shall determine by rule the maximum amount of bond or certificate of deposit required of a dealer and whether an annual bond or certificate of deposit will be required.

Section 26. Section 604.33, Florida Statutes, is amended to read:

604.33 Security requirements for grain dealers.—Each grain dealer doing business in the state shall maintain liquid security, in the form of grain on hand, cash, certificates of deposit, or other nonvolatile security that can be liquidated in 10 days or less, or cash bonds, surety bonds, or letters of credit, that have been assigned to the department and that are conditioned to secure the faithful accounting for and payment to the producers for grain stored or purchased, in an amount equal to the value of grain which the grain dealer has received from

grain producers for which the producers have not received payment. The bonds must be executed by the applicant as principal and by a surety corporation authorized to transact business in the state. The certificates of deposit and letters of credit must be from a recognized financial institution doing business in the United States. ~~Each grain dealer shall report to the department monthly, on or before a date established by rule of the department, the value of grain she or he has received from producers for which the producers have not received payment and the types of transaction involved, showing the value of each type of transaction. The report shall also include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.~~ The department may ~~shall~~ make at least one spot check annually of each grain dealer to determine compliance with the requirements of this section.

Section 27. The Board of Trustees of the Internal Improvement Trust Fund's property described as the south half of the southeast quarter of the northwest quarter and the north half of the northeast quarter of the southwest quarter of Section 9, Township 25 South, Range 29 East, Osceola County, shall be deeded, by quitclaim deed, on or before December 31, 2015, to the Department of Agriculture and Consumer Services. Notwithstanding the provisions of chapters 253 and 259, Florida Statutes, the Department of Agriculture and Consumer Services is directed to sell a portion of such deeded property described as that portion of the land lying south of Carroll Street of the parcel in Osceola County described as the north half of the northeast quarter of the southwest quarter of Section 9, Township 25 South, Range 29 East for at least the property's

appraised value in accordance with s. 255.25001, Florida Statutes. All net proceeds from the sale shall be deposited into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services. The department shall develop a plan to use the net proceeds for facility repairs and construction of an agricultural diagnostic laboratory at the Bronson Animal Disease Diagnostic Laboratory located in Osceola County. The plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

Section 28. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1050
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Montford
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 13, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Favorable**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Blizzard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1050 addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Designates tupelo honey as the official state honey.
- Changes the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application, and eliminates the $50 per month late charge for late recertification.
- Adds a definition for "vehicle" in ch. 500, F.S., in order to be consistent with the federal Food Safety Modernization Act, and adds definitions for the words "retail" and "wholesale" to clarify the types of food permits the department issues.
- Authorizes the department to sponsor "events," in addition to breakfasts, luncheons, or dinners, in order to promote agriculture and agricultural business products.
- Authorizes the department to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Authorizes the Commissioner of Agriculture to create an Office of Agriculture Technology Services.
- Authorizes the department to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.

- Clarifies the intent of the "Fresh From Florida" marketing brand in order to avoid the misconception that the brand is indicative of inspection for food safety purposes.
- Eliminates the department's power to adopt rules related to negotiating and entering into contracts with advertising agencies, purchasing requirements are covered by Department of Management Services' policies and procedures.
- Changes the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council so that a specific number of people from a particular industry are not required.
- Removes the requirement that the department notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. This change deletes the requirement that the owner must destroy or remove the plant within 10 days.
- Eliminates the Florida Forest Service's power to dedicate its land for use by the public as a park. Florida Forest Service lands do not include any state parks, and the Florida Forest Service does not manage any of its land for park purposes.
- Adds definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are programs which are authorized by federal law.
- Replaces every instance of the term "school district" with "district school board in s. 595.404, F.S., relating to the School Nutrition Program."
- Creates a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renames the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."
- Eliminates the need for dealers in agricultural products to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.
- Eliminates the requirement that each grain dealer report monthly to the department the value of grain it received from producers for which the producers have not received payment.
- Requires the Board of Trustees of the Internal Improvement Trust Fund to sell a portion of property located in Osceola County and directs the department to develop a plan to expend the proceeds at the Bronson Animal Disease Diagnostic Laboratory.

The bill has an insignificant impact on state revenues and expenditures.

The bill is effective July 1, 2015.

II. Present Situation:

This section topically describes the present situation and the bill's impact on each. See Section III., for a section-by-section analysis of the bill's provisions.

Tupelo Honey

Currently, no honey is designated as the official state honey. Tupelo honey is produced from the Ogeechee tupelo (nyssa ogeche) tree. The Ogeechee tupelo tree is located along rivers, swamps and ponds of the Coastal Plain that are frequently flooded.[1] The Ogeechee tupelo tree ranges from the Ogeechee River of Georgia to the Apalachicola and Chattahoochee River basins of northwest Florida.[2] The tupelo tree has a short blossoming season in April and May.[3] Tupelo honey will not granulate, and some doctors recommend this honey to diabetic patients due to its high laevulose content.[4]

Limited Certification for Urban Landscape Commercial Fertilizer Application[5]

Section 482.1562, F.S., outlines the application requirements to receive a Limited Commercial Fertilizer Certification. Renewals are required every four years. For those who hold a limited license, recertification applications must be submitted 90-days prior to expiration of the current license. If the renewal application is not received 60 days prior to the expiration date, a late fee of $50 is assessed in addition to the $25 renewal fee. In order to renew a Limited Commercial Fertilizer Certificate, the cost may be as much as $75. A new license is $25. The bill removes the late fee and allow certificate holders 30 days to renew their licenses. This process is consistent with other certifications under ch. 482, F.S.

Powers and Duties of the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) is empowered by the Legislature to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida's agricultural products to the consuming public. Section 570.07(20)(c), F.S., is somewhat limiting because it only refers to trade breakfasts, luncheons, and dinners for possible sponsorship opportunities. Adding the word "events" ensures that the department is covered by the types of sponsorships it will be able to provide so that it may continue to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products.

Currently, the department does not have enforcement capabilities regarding the misuse of the "Fresh From Florida" logo. The bill gives the department the same authority as the Department of Citrus, state universities, and others to enforce the trademarks and copyrights it obtains on behalf of the state. This language clarifies the authority of the department with regard to its ability to obtain and enforce rights in intellectual property created and utilized by the department. This authority is needed to ensure, as the "Fresh From Florida" mark becomes more popular, that the department can take immediate action to stop its misuse. Without this authority, valuable time could be lost by having to educate the Department of State, the agency currently holding

[1] See U.S. Forest Service website located at http://www.na.fs.fed.us/pubs/silvics_manual/volume_2/nyssa/ogeche.htm.
[2] See Tupelo Beekeepers Association website located at http://www.tupelobeekeepers.com/.
[3] *Id*.
[4] *Id*.
[5] Information for this analysis was submitted February 26, 2015, by the Department of Agriculture and Consumer Services, in response to a request by the Senate Agriculture Committee.

this responsibility for the state, about the consequences of the misuse of the "Fresh From Florida" mark. The direct enforcement capability by the department will result in faster and more cost effective enforcement.

Currently, the Division of Administration is responsible for "providing electronic data processing and management information systems support for the department." The Office of Agriculture Technology Services proposes to establish the office as a stand-alone office under the supervision of a senior manager within ch. 570, F.S. This change paves the way for continued implementation of the department's information technology strategic plan.

Pest Control Trust Fund

Section 482.2401, F.S. restricts the use of funds to carry out the provisions of ch. 482, F.S. This prevents resources funded in ch. 482, F.S., from being used to conduct work for other programs, which is problematic when functions across programs are combined within a work unit, such as licensing or inspections. Prior to the reorganization of the Division of Agriculture Environmental Services (AES), the work units were separate for each statutory area. The re-organization streamlined these units. The bill authorizes the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (ch. 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing and regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2018.

Division of Food Safety

Section 570.50(5), F.S., authorizes the Division of Food Safety to analyze food and animal feed samples for chemical residues as required under the adulteration sections of ch. 500 and ch. 580, F.S. The primary effect of the proposed change is to fully characterize the current actions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that might be harmful to humans or animals. Along with potential chemical adulterants, there is concern with microbiological and physical adulteration of food or feed products. The department already performs these activities as a service to the Divisions of Agriculture Environmental Services and Animal Industry, as well as part of the Food and Drug Administration's (FDA) surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to ch. 502, F.S., to the current statute and striking the reference to chemical residues, the department is able to fully encompass the activities performed in the Division of Food Safety laboratories.

Division of Marketing and Development

Currently, Agriculture Dealer's licenses are issued through the Division of Marketing. For efficiency purposes, the bill moves the duties associated with issuing Agriculture Dealer's Licenses to the Division of Consumer Services, which already has the same duties for several other licenses. The Division of Marketing also is currently tasked with regulating livestock markets. The bill tasks responsibility of regulating livestock markets to the department rather than to a specific division.

Florida Agricultural Promotional Campaign Advisory Council

Section 571.28, F.S., creates the membership of the Florida Agricultural Promotional Campaign Advisory Council. The membership must include six members representing agricultural producers, shippers, or packers; three members representing agricultural retailers; two members representing agricultural associations; one member representing a wholesaler of agricultural products; one member representing consumers; and one member representing the department. The bill allows members to be selected without regard for a specific number from each category of business, but rather an overall representation of the major business components important to the business of agriculture.

Notice of Infection of Plants and Destruction

Section 581.181, F.S., does not allow for discretion in determining when it is necessary to take immediate action to remove and destroy a noxious, infested or infected plant or plant product. The bill gives the department flexibility to determine if it is necessary to invoke procedures for immediate action for the cause of removal and destruction of a noxious plant, non-noxious plant, or plant product infested or infected with a pest or disease. For example, noxious plants, plant pests, or plant diseases that are well-established in Florida and are not under a department eradication or control program may not justify requiring immediate action to eliminate or otherwise mitigate.

School Food and Nutrition Service Program

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes the department to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.

Schools must apply through the department and complete certain requirements prior to the operation of a school nutrition program. Once approved, the department reimburses the schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Chapter 595, F.S., does not contain definitions for “school breakfast program,” “summer nutrition program,” or “universal school breakfast program.” The bill adds these definitions to specify that they are the programs authorized by federal law. The department administers more than one United States Department of Agriculture summer nutrition program. The bill amends the definition of “summer nutrition programs” to specify that certain requirements apply to all summer nutrition programs.

Currently, the department must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. Further, the department may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program. There is no restriction on when or for which program the funds may be advanced. The bill clarifies that the department does not just make efforts to, but actually ensures through its processes and procedures that all eligible severe need schools receive the higher rate of reimbursement. This change will have no economic or substantive effect on any interest groups or stakeholders and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law. The bill also clarifies that the department will only advance funds when requested by sponsors of the Summer Food Service Program.

Florida Farm to Schools Program

Section 595.406, F.S., provides for implementation of the Florida Farm Fresh Schools Program. The program was instituted in 2010 to require the Florida Department of Education to work with the department to increase the presence of Florida-grown products into schools. When the administration of the school nutrition programs was transferred to the department, this program became part of the Florida Farm to School Program, which was already being administered by the department. The bill replaces all references to the "Florida Farm Fresh Schools Program" with the "Florida Farm to School Program." This allows for consistent messaging and marketing around the department's efforts as stated in the statute. Further changes will allow the department to recognize those sponsors who have purchased 10 percent of the food they serve from the Florida Farm to School Program.

Children's Summer Nutrition Program

Section 595.407, F.S., requires all school districts to develop a plan to sponsor a summer nutrition program to operate within five miles of at least one elementary school where 50 percent or more of the students are eligible for free or reduced prices meals for 35 consecutive days, and also within 10 miles of each elementary school where 50 percent or more of the students are eligible for free or reduced-price meals. The bill specifies that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades K-5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to the department, interpretation of this statute has varied greatly. This change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.

The bill remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. This allows school districts to exclude holidays and weekends.

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Currently, any agricultural dealer who is engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative is required to obtain a bond or certificate of deposit (CD), as required in s. 604.20(1) F.S. If a CD is the chosen form of security, the dealer is required to furnish the department the CD or a CD receipt, a bank's acknowledgement letter and an assignment of CD. The bill eliminates the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgement that the agreement has been properly recorded.

Each grain dealer must report to the department monthly the value of grain it received from producers for which the producers have not received payment. This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers. The bill eliminates the requirement that each grain dealer report monthly to the department, as only three of the four licensed dealers are required to do so. The dealers will continue to be licensed and bonded which allows the department to request information from dealers in the event of a complaint or suspected malpractice.

Bronson Animal Disease Diagnostic Laboratory

The Division of Animal Industry is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases. Section 585.61, F.S., establishes the Bronson Animal Disease Diagnostic Laboratory (lab) located in Osceola County. The lab complex is located on property deeded to the Board of Trustees of the Internal Improvement Trust Fund.

III. Effect of Proposed Changes:

Section 1 creates s.15.0521, F.S., to designate tupelo honey as the official state honey.

Section 2 amends s. 482.1562, F.S., to change the deadline for submitting a recertification application for a current limited certification for urban landscape commercial fertilizer application. The bill requires the application to be submitted four years after the date of issuance and eliminates the $50 per month late charge for late recertification.

Section 3 amends s. 500.03, F.S., to include a definition for the word "vehicle" in order to be consistent with the federal Food Safety Modernization Act. It also adds definitions for the words "retail" and "wholesale" to clarify the types of food permits that the department issues.

Section 4 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services (DACS or department) to sponsor "events," in addition to trade breakfasts, luncheons, and dinners, to promote agriculture and agricultural business products. It also authorizes the department to secure letters of patent, copyrights, and trademarks on any work product of the department and accordingly to enforce its rights.

Section 5 amends s. 570.30, F.S., to remove electronic data processing and management information systems support as a duty for the department's Division of Administration.

Section 6 amends s. 570.441, F.S., to authorize the department to use money deposited in the Pest Control Trust Fund to carry out any of the powers and duties of the Division of Agricultural Environmental Services. This subsection expires June 30, 2018.

Section 7 amends s. 570.50, F.S., to fully characterize the current functions of the Division of Food Safety in analyzing food, milk, milk products, frozen desserts, and animal feed products for any potential adulterant or substance that might be harmful to humans or animals. Along with potential chemical adulterants, concerns exist with microbiological and physical adulteration of food or feed products. These are activities that the division already performs for other divisions, as well as part of FDA surveillance activities, and in reaction to animal feed outbreaks. By adding a reference to ch. 502, F.S., the department will be able to fully encompass the activities performed in the Division of Food Safety's labs.

Section 8 amends s. 570.53, F.S., to remove enforcement of provisions relating to dealers in agricultural products from the duties of the Division of Marketing and Development. The Division of Marketing is currently tasked with regulating livestock markets.

Section 9 amends s. 570.544, F.S., to move issuance of Agriculture Dealer's Licenses from the Division of Marketing and Development to the Division of Consumer Services, which already issues several other licenses. It also requires the department, rather than a specific division, to regulate Live Stock Markets

Section 10 creates s. 570.68, F.S., to create the Office of Agriculture Technology Services to provide electronic data processing and agency information technology services to the department.

Section 11 amends s. 570.681, F.S., to clarify legislative findings with regard to the Florida Agriculture Center and Horse Park.

Section 12 amends s. 570.685, F.S., to authorize the department to provide staff and meeting space for the Florida Agriculture Center and Horse Park Authority.

Section 13 amends s. 571.24, F.S., to clarify the intent of the Florida Agricultural Promotional Campaign as a marketing program. It removes an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council.

Section 14 amends s. 571.27, F.S., to remove obsolete provisions relating to the department's authority to adopt rules related to negotiating and entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign.

Section 15 amends s. 571.28, F.S., to change the membership criteria for the Florida Agricultural Promotional Campaign Advisory Council, so that a specific number of people from a particular industry are not required.

Section 16 amends s. 581.181, F.S., to remove the requirement that the department notify a property, owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida. With this change, the owner will not be required to destroy or remove the plant within 10 days.

Section 17 repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. The bill repeals this section because the Florida Forest Service does not acquire or have lands for "park purposes." The department acquires forest land for multi-use purposes.

Section 18 amends s. 595.402, F.S., to add definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that these programs are authorized by federal law.

Section 19 amends s. 595.404, F.S., to clarify requirements for the School Nutrition Program. The bill creates a duty for each school district to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. It specifies that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. The bill also requires the department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs.

Section 20 amends s. 595.405, to replace every instance of the term "school district" with "district school board." It rewrites the provisions of this section, which specifies that each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. The bill also provides criteria for when a universal school breakfast program must be provided. The reorganizing of the section combines several subsections and removes conflicting and duplicative clauses, so that the section is easier to read, interpret, and apply.

Section 21 amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program." The bill authorizes the department to recognize sponsors who purchase at least ten percent of the food they serve from the Florida Farm to School Program.

Section 22 amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within five miles of at least one school that serves any combination of grades kindergarten through 5, not just elementary schools. The bill removes the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replaces it with the requirement that each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends.

Section 23 amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.

Section 24 amends s. 595.501, F.S., to require sponsors to complete corrective action plans, required by the department or a federal agency, so that they are in compliance with school food and nutrition service programs. This amendment removes the requirements for corrective action plans from s. 595.405, F.S., and place them within this section.

Section 25 amends s. 595.601, F.S., to correct a cross-reference.

Section 26 amends s. 604.20, F.S., to remove a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution.

Section 27 amends s. 604.33, F.S., to remove provisions requiring grain dealers to submit monthly reports. The bill authorizes rather than requires the department to make at least one spot check annually of each grain dealer.

Section 28 directs the Board of Trustees of the Internal Improvement Trust Fund to sell certain property located in Osceola County, currently leased to the department. The bill requires all net proceeds from the sale to be deposited into the General Inspection Trust Fund. The department is directed to develop a plan to expend the proceeds for facility repair and construction at the Bronson Animal Disease Diagnostic Laboratory and requires the plan to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

Section 29 provides that this act shall take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private Sector Impact Section.

B. Private Sector Impact:

CS/SB 1050 eliminates the $50 late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on persons who apply commercial fertilizer by eliminating a fee.

The bill eliminates certain financial assurance and licensing requirements for dealers in agricultural products and for grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The bill creates an exemption from the destruction requirement for plant or plant products infested with pests or noxious weeds that are widely established in Florida and not regulated by the Department of Agriculture and Consumer Services (department). This may have a positive impact on those who own the plant or plant products infested with pests or noxious weeds by not requiring the owners to destroy them.

C. Government Sector Impact:

Eliminating the $50 late fee for a limited certification for urban landscape commercial fertilizer application appears to have an insignificant negative impact on state government revenues. The fee was first established by ch. 2009-199, Laws of Florida. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape is required to be certified. The certification is good for four years from the date of issuance; therefore, no late fees have been assessed.

The bill has an insignificant impact associated with the creation of s. 570.68, F.S., which creates the Office of Agriculture Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is a retiree of the state retirement system who has been reemployed and is not eligible to participate in a state administered retirement system. The state contributes a set amount to the state retirement account for employees ineligible to earn a second retirement. The current retirement contribution rate for an ineligible employee in a regular class is 3.80%; the contribution rate for an ineligible employee in a senior management class is 16.30%. Changing the department's current Chief Information Officer to a senior management class will result in an additional annual state retirement contribution of $11,795 from general revenue. The department will manage the additional costs within existing salary and benefit resources.

The bill directs the Board of Trustees of the Internal Improvement Trust Fund to sell a portion of property in Osceola County and deposit the proceeds into the department's General Inspection Trust Fund. Subject to appropriation from the Legislature, the department is required to expend the proceeds for facility repairs and construction at the Bronson Animal Disease Diagnostic Laboratory located in Osceola County. The proceeds from the sale of the property are indeterminate. The department estimates expenditures related to the lab repairs and construction will be offset by the revenues received from the sale of the property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 482.1562, 500.03, 570.07, 570.30, 570.441, 570.50, 570.53, 570.544, 570.681, 570.685, 571.24, 571.27, 571.28, 581.181, 595.402, 595.404, 595.405, 595.406, 595.407, 595.408, 595.501, 595.601, 604.20, and 604.33.

This bill creates sections 15.0521 and 570.68 of the Florida Statutes.

This bill repeals section 589.26 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 9, 2015:
The committee substitute:

- Designates tupelo honey as the official state honey.
- Restores provisions requiring the Department of Agriculture and Consumer Services to give certain priority consideration when evaluating agriculture education and promotion facilities.
- Directs the Board of Trustees of the Internal Improvement Trust Fund, rather than the department, to sell certain property located in Osceola County.
- Requires the department to sell a portion of the property and develop a plan to expend the proceeds from the sale for repairs and construction of an agricultural diagnostic laboratory.

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 Montford

3-00902A-15 20151050__

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 288.1175, F.S.; removing provisions requiring the department to give certain priority consideration when evaluating applications for funding of agriculture education and promotion facilities; amending s. 482.1562, F.S.; clarifying the date by which an application for recertification of a limited certification for urban landscape commercial fertilizer application is required; removing provisions imposing late renewal charges; providing a grace period for such recertification; amending s. 500.03, F.S.; defining terms relating to the Florida Food Safety Act; amending s. 570.07, F.S.; revising powers and duties of the department to include sponsoring events; authorizing the department to secure letters of patent, copyrights, and trademarks on work products and to engage in acts accordingly; amending s. 570.30, F.S.; removing electronic data processing and management information systems support for the department as a power and duty of the Division of Administration; amending s. 570.441, F.S.; authorizing the use of funds in the Pest Control Trust Fund for activities of the Division of Agricultural Environmental Services; amending s. 570.50, F.S.; revising powers and duties of the Division of Food Safety to include analyzing milk, milk products, and frozen desserts offered for sale in the state;

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

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amending s. 570.53, F.S.; revising duties of the Division of Marketing and Development to remove enforcement of provisions relating to dealers in agricultural products; amending s. 570.544, F.S.; revising duties of the director of the Division of Consumer Services to include enforcement of provisions relating to dealers in agricultural products and grain dealers; creating s. 570.68, F.S.; authorizing the Commissioner of Agriculture to create an Office of Agriculture Technology Services; providing duties of the office; amending s. 570.681, F.S.; clarifying legislative findings with regard to the Florida Agriculture Center and Horse Park; amending s. 570.685, F.S.; authorizing rather than requiring the department to provide administrative and staff support services, meeting space, and record storage for the Florida Agriculture Center and Horse Park Authority; amending s. 571.24, F.S.; clarifying the intent of the Florida Agricultural Promotional Campaign as a marketing program; removing an obsolete provision relating to the designation of a division employee as a member of the Advertising Interagency Coordinating Council; amending s. 571.27, F.S.; removing obsolete provisions relating to the authority of the department to adopt rules for entering into contracts with advertising agencies for services that are directly related to the Florida Agricultural Promotional Campaign; amending s. 571.28, F.S.; revising provisions specifying membership criteria of the

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

Florida Agricultural Promotional Campaign Advisory Council; amending s. 581.181, F.S.; providing applicability of provisions requiring treatment or destruction of infested or infected plants and plant products; repealing s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate and reserve state park lands for public use; amending s. 595.402, F.S.; defining terms relating to the school food and nutrition service program; amending s. 595.404, F.S.; revising duties of the department with regard to the school food and nutrition service program; directing the department to collect and publish data on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs; amending s. 595.405, F.S.; clarifying requirements for the School Nutrition Program; providing for breakfast meals to be available to all students in schools that serve any combination of grades kindergarten through 5; amending s. 595.406, F.S.; renaming the "Florida Farm Fresh Schools Program" as the "Florida Farm to School Program"; authorizing the department to establish by rule a recognition program for certain sponsors; amending s. 595.407, F.S.; revising provisions of the children's summer nutrition program to include certain schools that serve any combination of grades kindergarten through 5; revising provisions relating to the duration of the program; authorizing school districts to exclude holidays and weekends; amending s. 595.408,

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F.S.; conforming references to changes made by the act; amending s. 595.501, F.S.; requiring entities to complete corrective action plans required by the department or a federal agency to be in compliance with school food and nutrition service programs; amending s. 595.601, F.S.; correcting a cross-reference; amending s. 604.20, F.S.; removing a provision requiring an applicant for license as a dealer in agricultural products to submit a letter acknowledging assignment of a certificate of deposit from the issuing institution; amending s. 604.33, F.S.; removing provisions requiring grain dealers to submit monthly reports; authorizing rather than requiring the department to make at least one spot check annually of each grain dealer; providing an effective date.

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

Section 1. Subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The Department of Agriculture and Consumer Services shall ~~competitively~~ evaluate applications for funding of an agriculture education and promotion facility based on the following criteria and list the applications alphabetically by applicant name~~.~~ if the number of applicants exceeds three~~, the Department of Agriculture and Consumer Services shall rank the applications based upon criteria developed by the Department of~~

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

~~Agriculture and Consumer Services, with priority given in descending order to the following items~~:

(a) The intended use of the funds by the applicant~~, with priority given to the construction of a new facility~~.

(b) The amount of local match~~, with priority given to the largest percentage of local match proposed~~.

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004, an agriculturally depressed area as defined in s. 570.74, or a county that has lost its agricultural land to environmental restoration projects.

(d) The net increase, as a result of the facility, of total available exhibition, arena, or civic center space within the jurisdictional limits of the local government in which the facility is to be located~~, with priority given to the largest percentage increase of total exhibition, arena, or civic center space~~.

(e) The historic record of the applicant in promoting agriculture and educating the public about agriculture, including, without limitation, awards, premiums, scholarships, auctions, and other such activities.

(f) The highest projection on paid attendance attracted by the agriculture education and promotion facility and the proposed economic impact on the local community.

(g) The location of the facility with respect to an Institute of Food and Agricultural Sciences (IFAS) facility~~, with priority given to facilities closer in proximity to an IFAS facility~~.

Section 2. Subsections (5) and (6) of section 482.1562,

Florida Statutes, are amended to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(5) An application for recertification must be made 4 years after the date of issuance ~~at least 90 days before the expiration~~ of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least $25 but not more than $75. Until the fee is set by rule, the fee for certification is $25.

(6) ~~A late renewal charge of $50 per month shall be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date.~~ Upon expiration, or after a grace period which does not exceed 30 days after expiration, a certificate may be issued only upon reapplying in accordance with subsection (3).

Section 3. Present paragraph (bb) of subsection (1) of section 500.03, Florida Statutes, is redesignated as paragraph (cc), and a new paragraph (bb) and paragraphs (dd) and (ee) are added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(bb) "Retail" means the offering of food directly to the consumer.

(dd) "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another,

including, but not limited to, carts, vans, trucks, cars, trains and railway transport, and aircraft and watercraft type transport.

(ee) "Wholesale" means the offering of food to businesses for resale.

Section 4. Paragraph (c) of subsection (20) of section 570.07, Florida Statutes, is amended, and subsection (44) is added to that section, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(20)

(c) To sponsor events, trade breakfasts, luncheons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida's agricultural and agricultural business products to the consuming public.

The department is authorized to receive and expend donations contributed by private persons for the purpose of covering costs associated with the above described activities.

(44) The department may, in its own name:

(a) Perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products of the department and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture

or use of such department work products on a royalty basis or for such other consideration as the department shall deem proper.

(c) Take any action necessary, including legal action, to protect such department work products against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due to the department for the manufacture or use of such department work products by another party.

(e) Sell any of such department work products and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties conferred upon the department by this section, including adopting rules, as necessary, in order to administer this section.

Section 5. Subsection (5) of section 570.30, Florida Statutes, is amended, to read:

570.30 Division of Administration; powers and duties.—The Division of Administration shall render services required by the department and its other divisions, or by the commissioner in the exercise of constitutional and cabinet responsibilities, that can advantageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The duties of this division include, but are not limited to:

~~(5) Providing electronic data processing and management information systems support for the department.~~

Section 6. Subsection (4) is added to section 570.441, Florida Statutes, to read:

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), moneys collected or received by the department under chapter 482 may be used to carry out the provisions of s. 570.44. This subsection expires June 30, 2018.

Section 7. Subsection (5) of section 570.50, Florida Statutes, is amended to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(5) Analyzing food and feed samples offered for sale in the state ~~for chemical residues~~ as required under the adulteration sections of chapters 500, 502, and 580.

Section 8. Subsection (2) of section 570.53, Florida Statutes, is amended to read:

570.53 Division of Marketing and Development; powers and duties.—The powers and duties of the Division of Marketing and Development include, but are not limited to:

~~(2) Enforcing the provisions of ss. 604.15-604.34, the dealers in agricultural products law, and ss. 534.47-534.53.~~

Section 9. Subsection (2) of section 570.544, Florida Statutes, is amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

(2) The director shall supervise, direct, and coordinate the activities of the division and shall, under the direction of the department, enforce the provisions of ss. 604.15-604.34 and chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.

Section 10. Section 570.68, Florida Statutes, is created to read:

570.68 Office of Agriculture Technology Services.—The commissioner may create an Office of Agriculture Technology Services under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The office shall provide electronic data processing and agency information technology services to support and facilitate the functions, powers, and duties of the department.

Section 11. Section 570.681, Florida Statutes, is amended to read:

570.681 Florida Agriculture Center and Horse Park; legislative findings.—It is the finding of the Legislature that:

~~(1) Agriculture is an important industry to the State of Florida, producing over $6 billion per year while supporting over 230,000 jobs.~~

(1)~~(2)~~ Equine and other agriculture-related industries ~~will~~ strengthen and benefit each other with the establishment of a statewide agriculture and horse facility.

(2)~~(3)~~ The ~~A~~ Florida Agriculture Center and Horse Park provides ~~will provide~~ Florida with a unique tourist experience for visitors and residents, thus generating taxes and additional dollars for the state.

(3)~~(4)~~ Promoting the Florida Agriculture Center and Horse Park as a joint effort between the state and the private sector allows ~~will allow~~ this facility to utilize experts and generate revenue from many areas to ensure the success of this facility.

Section 12. Paragraphs (b) and (c) of subsection (4) of section 570.685, Florida Statutes, are amended to read:

570.685 Florida Agriculture Center and Horse Park Authority.—

(4) The authority shall meet at least semiannually and elect a chair, a vice chair, and a secretary for 1-year terms.

(b) The department may provide ~~shall be responsible for providing~~ administrative and staff support services relating to the meetings of the authority and may ~~shall~~ provide suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting, which shows ~~record shall show~~ the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by members of the authority.

Section 13. Section 571.24, Florida Statutes, is amended to read:

571.24 Purpose; duties of the department.—The purpose of this part is to authorize the department to establish and coordinate the Florida Agricultural Promotional Campaign, which is intended to serve as a marketing program to promote Florida agricultural commodities, value-added products, and agricultural related businesses and not a food safety or traceability program. The duties of the department shall include, but are not limited to:

(1) Developing logos and authorizing the use of logos as provided by rule.

(2) Registering participants.

(3) Assessing and collecting fees.

(4) Collecting rental receipts for industry promotions.

(5) Developing in-kind advertising programs.

(6) Contracting with media representatives for the purpose of dispersing promotional materials.

(7) Assisting the representative of the department who serves on the Florida Agricultural Promotional Campaign Advisory Council.

~~(8) Designating a division employee to be a member of the Advertising Interagency Coordinating Council.~~

(8)~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(9)~~(10)~~ Enforcing and administering the provisions of this part, including measures ensuring that only Florida agricultural or agricultural based products are marketed under the "Fresh From Florida" or "From Florida" logos or other logos of the Florida Agricultural Promotional Campaign.

Section 14. Section 571.27, Florida Statutes, is amended to read:

571.27 Rules.—The department is authorized to adopt rules that implement, make specific, and interpret the provisions of this part~~, including rules for entering into contracts with advertising agencies for services which are directly related to the Florida Agricultural Promotional Campaign. Such rules shall establish the procedures for negotiating costs with the offerors of such advertising services who have been determined by the department to be qualified on the basis of technical merit, creative ability, and professional competency. Such~~

~~determination of qualifications shall also include consideration of the provisions in s. 287.055(3), (4), and (5)~~. The department is further authorized to determine, by rule, the logos or product identifiers to be depicted for use in advertising, publicizing, and promoting the sale of Florida agricultural products or agricultural-based products in the Florida Agricultural Promotional Campaign. The department may also adopt rules consistent ~~not inconsistent~~ with ~~the provisions of~~ this part as in its judgment may be necessary for participant registration, renewal of registration, classes of membership, application forms, and ~~as well as~~ other forms and enforcement measures ensuring compliance with this part.

Section 15. Subsection (1) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(1) ORGANIZATION.—There is ~~hereby~~ created within the department the Florida Agricultural Promotional Campaign Advisory Council, to consist of 15 members appointed by the Commissioner of Agriculture for 4-year staggered terms. The membership shall include: 13 ~~six~~ members representing agricultural producers, shippers, ~~or~~ packers, ~~three members representing agricultural~~ retailers, ~~two members representing~~ agricultural associations, and wholesalers ~~one member representing a wholesaler~~ of agricultural products, one member representing consumers, and one member representing the department. Initial appointment of the council members shall be four members to a term of 4 years, four members to a term of 3 years, four members to a term of 2 years, and three members to a

term of 1 year.

Section 16. Subsection (3) is added to section 581.181, Florida Statutes, to read:

581.181 Notice of infection of plants; destruction.—

(3) This section does not apply to plants or plant products infested with pests or noxious weeds that are determined to be widely established within the state and are not specifically regulated under other sections of statutes or rules adopted by the department.

Section 17. Section 589.26, Florida Statutes, is repealed.

Section 18. Present subsections (4) and (5) of section 595.402, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) and subsections (7) and (8) are added to that section, to read:

595.402 Definitions.—As used in this chapter, the term:

(4) "School breakfast program" means a program authorized by section 4 of the Child Nutrition Act of 1966 and administered by the department.

(7) "Summer nutrition program" means one or more of the programs authorized under 42 U.S.C. s. 1761.

(8) "Universal school breakfast program" means a program that makes breakfast available at no cost to all students regardless of their household income.

Section 19. Subsections (5) and (12) of section 595.404, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

595.404 School food and nutrition service program; powers and duties of the department.—The department has the following powers and duties:

(5) To provide ~~make a reasonable effort to ensure that any school designated as~~ a "severe need school" ~~receives~~ the highest rate of reimbursement to which it is entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

(12) To advance funds from the program's annual appropriation to a summer nutrition program sponsor~~s~~, when requested, in order to implement the provisions of this chapter and in accordance with federal regulations.

(13) To collect data on food purchased through the programs defined in ss. 595.402(3) and 595.406 and to publish that data annually.

Section 20. Section 595.405, Florida Statutes, is amended to read:

595.405 School Nutrition Program requirements ~~for school districts and sponsors~~.—

(1) Each ~~school~~ district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition service program for students consistent with federal law and department rules.

(2) Each ~~school~~ district school board shall implement school breakfast programs that make breakfast meals available to all students in each ~~elementary~~ school that serves any combination of grades kindergarten through 5. ~~Universal school breakfast programs shall be offered in schools in which 80 percent or more of the students are eligible for free or reduced price meals. Each school shall, to the maximum extent practicable, make breakfast meals available to students at an alternative site location, which may include, but need not be~~

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

~~limited to, alternative breakfast options as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.~~

(3) Each ~~school~~ district school board must annually set prices for breakfast meals at rates that, combined with federal reimbursements and state allocations, are sufficient to defray costs of school breakfast programs without requiring allocations from the district's operating funds, except if the district school board approves lower rates.

~~(4) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. Each school district shall approve or disapprove a policy, after receiving public testimony concerning the proposed policy at two or more regular meetings, which makes universal, free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals.~~

(4)~~(5)~~ Each ~~elementary, middle, and high~~ school operating a breakfast program shall make a breakfast meal available if a student arrives at school on the school bus less than 15 minutes before the first bell rings and shall allow the student at least 15 minutes to eat the breakfast.

(5) Each school district is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or

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

reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides to not implement such a program in such schools.

(6) To increase school breakfast and universal school breakfast program participation, each school district must, to the maximum extent practicable, make breakfast meals available to students through alternative service models as described in publications of the Food and Nutrition Service of the United States Department of Agriculture for the federal School Breakfast Program.

(7) ~~(6)~~ Each ~~school~~ district school board shall annually provide ~~to all students in each elementary, middle, and high school~~ information prepared by the district's food service administration regarding available ~~its~~ school breakfast programs. The information shall be communicated through school announcements and ~~written~~ notices sent to all parents.

(8) ~~(7)~~ A ~~school~~ district school board may operate a breakfast program providing for food preparation at the school site or in central locations with distribution to designated satellite schools or any combination thereof.

~~(8) Each sponsor shall complete all corrective action plans required by the department or a federal agency to be in compliance with the program.~~

Section 21. Section 595.406, Florida Statutes, is amended to read:

595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

(1) In order to implement the Florida Farm to School ~~Fresh Schools~~ Program, the department shall develop policies

pertaining to school food services which encourage:

(a) Sponsors to buy fresh and high-quality foods grown in this state when feasible.

(b) Farmers in this state to sell their products to sponsors, school districts, and schools.

(c) Sponsors to demonstrate a preference for competitively priced organic food products.

(d) Sponsors to make reasonable efforts to select foods based on a preference for those that have maximum nutritional content.

(2) The department shall provide outreach, guidance, and training to sponsors, schools, school food service directors, parent and teacher organizations, and students about the benefit of fresh food products from farms in this state.

(3) The department may recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program.

Section 22. Subsection (2) of section 595.407, Florida Statutes, is amended to read:

595.407 Children's summer nutrition program.—

(2) Each school district shall develop a plan to sponsor or operate a summer nutrition program to operate sites in the school district as follows:

(a) Within 5 miles of at least one ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 ~~consecutive~~ days between the end of the school year and the beginning of the next school year. School districts may exclude

holidays and weekends.

(b) Within 10 miles of each ~~elementary~~ school that serves any combination of grades kindergarten through 5 at which 50 percent or more of the students are eligible for free or reduced-price school meals, except as operated pursuant to paragraph (a).

Section 23. Section 595.408, Florida Statutes, is amended to read:

595.408 Food ~~Commodity~~ distribution services; department responsibilities and functions.—

(1)(a) The department shall conduct, supervise, and administer all food ~~commodity~~ distribution services that will be carried on using federal or state funds, or funds from any other source, or food ~~commodities~~ received and distributed from the United States or any of its agencies.

(b) The department shall determine the benefits each applicant or recipient of assistance is entitled to receive under this chapter, provided that each applicant or recipient is a resident of this state and a citizen of the United States or is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) The department shall cooperate fully with the United States Government and its agencies and instrumentalities so that the department may receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of this chapter.

(3) The department may:

(a) Accept any duties with respect to food ~~commodity~~

distribution services as are delegated to it by an agency of the federal government or any state, county, or municipal government.

(b) Act as agent of, or contract with, the federal government, state government, or any county or municipal government in the administration of food ~~commodity~~ distribution services to secure the benefits of any public assistance that is available from the federal government or any of its agencies, and in the distribution of funds received from the federal government, state government, or any county or municipal government for food ~~commodity~~ distribution services within the state.

(c) Accept from any person or organization all offers of personal services, food ~~commodities~~, or other aid or assistance.

(4) This chapter does not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 24. Section 595.501, Florida Statutes, is amended to read:

595.501 Penalties.—

(1) When a corrective action plan is issued by the department or a federal agency, each sponsor is required to complete the corrective action plan to be in compliance with the program.

(2) Any person or~~,~~ sponsor~~, or school district~~ that violates any provision of this chapter or any rule adopted thereunder or otherwise does not comply with the program is subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This section does not restrict the

applicability of any other law.

Section 25. Section 595.601, Florida Statutes, is amended to read:

595.601 Food and Nutrition Services Trust Fund.—Chapter 99-37, Laws of Florida, recreated the Food and Nutrition Services Trust Fund to record revenue and disbursements of Federal Food and Nutrition funds received by the department as authorized in s. 595.404 ~~595.405~~.

Section 26. Subsection (1) of section 604.20, Florida Statutes, is amended to read:

604.20 Bond or certificate of deposit prerequisite; amount; form.—

(1) Before any license is issued, the applicant ~~therefor~~ shall make and deliver to the department a surety bond or certificate of deposit in the amount of at least $5,000 or in such greater amount as the department may determine. No bond or certificate of deposit may be in an amount less than $5,000. The penal sum of the bond or certificate of deposit to be furnished to the department by an applicant for license as a dealer in agricultural products shall be in an amount equal to twice the dollar amount of agricultural products handled for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the month of maximum transaction in such products during the preceding 12-month period. An applicant for license who has not handled agricultural products for a Florida producer or a producer's agent or representative, by purchase or otherwise, during the preceding 12-month period shall furnish a bond or certificate of deposit in an amount equal to twice the estimated dollar amount of such agricultural products to be

handled, by purchase or otherwise, during the month of maximum transaction during the next immediate 12 months. Such bond or certificate of deposit shall be provided or assigned in the exact name in which the dealer will conduct business subject to ~~the provisions of~~ ss. 604.15-604.34. Such bond must be executed by a surety company authorized to transact business in the state. For the purposes of ss. 604.19-604.21, the term "certificate of deposit" means a certificate of deposit at any recognized financial institution doing business in the United States. A ~~No~~ certificate of deposit may not be accepted in connection with an application for a dealer's license unless the issuing institution is properly insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Such bond or any certificate of deposit assignment or agreement shall be upon a form prescribed or approved by the department and shall be conditioned to secure the faithful accounting for and payment, in the manner prescribed by s. 604.21(9), to producers or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer and to secure payment to dealers who sell agricultural products to such dealer. Such bond or certificate of deposit assignment or agreement shall include terms binding the instrument to the Commissioner of Agriculture. A certificate of deposit shall be presented with an assignment of applicant's rights in the certificate in favor of the Commissioner of Agriculture on a form prescribed by the department ~~and with a letter from the issuing institution~~ acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the

issuing institution. Such assignment shall be irrevocable while the dealer's license is in effect and for an additional period of 6 months after the termination or expiration of the dealer's license, if a ~~provided no~~ complaint is not pending against the licensee. If a complaint is pending, the assignment shall remain in effect until all actions on the complaint have been finalized. The certificate of deposit may be released by the assignee of the financial institution to the licensee or the licensee's successors, assignee, or heirs if ~~no~~ claims are not pending against the licensee before the department at the conclusion of 6 months after the last effective date of the license. A ~~No~~ certificate of deposit which ~~shall be accepted that~~ contains any provision that would give the issuing institution any prior rights or claim on the proceeds or principal of such certificate of deposit may not be accepted. The department shall determine by rule the maximum amount of bond or certificate of deposit required of a dealer and whether an annual bond or certificate of deposit will be required.

Section 27. Section 604.33, Florida Statutes, is amended to read:

604.33 Security requirements for grain dealers.—Each grain dealer doing business in the state shall maintain liquid security, in the form of grain on hand, cash, certificates of deposit, or other nonvolatile security that can be liquidated in 10 days or less, or cash bonds, surety bonds, or letters of credit, that have been assigned to the department and that are conditioned to secure the faithful accounting for and payment to the producers for grain stored or purchased, in an amount equal to the value of grain which the grain dealer has received from

grain producers for which the producers have not received payment. The bonds must be executed by the applicant as principal and by a surety corporation authorized to transact business in the state. The certificates of deposit and letters of credit must be from a recognized financial institution doing business in the United States. ~~Each grain dealer shall report to the department monthly, on or before a date established by rule of the department, the value of grain she or he has received from producers for which the producers have not received payment and the types of transaction involved, showing the value of each type of transaction. The report shall also include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.~~ The department may ~~shall~~ make at least one spot check annually of each grain dealer to determine compliance with the requirements of this section.

Section 28. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr. 9, 2015
Meeting Date

1050
Bill Number (if applicable)

Topic FDACS Ag Dept. bill

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title Dir. Legislative Affairs

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Tallahassee FL 32399
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Email

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

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

Representing FL Dept. Agriculture & Consumer Services

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

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1054
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Evers
SUBJECT:	Retirement
DATE:	April 8, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	**Fav/CS**
2.	White	Yeatman	CA	**Favorable**
3.	McSwain	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1054 grants local government employers the authority to reassess its designation of positions in, and remove positions from, the Senior Management Service Class of the Florida Retirement System. The first period during which positions may be reassessed is July 1, 2015, through December 31, 2015, and every five years thereafter.

The fiscal impact of the bill is $18,900 for staff overtime at the Division of Retirement (division) of the Department of Management Services, to accommodate the additional workload every five years.

The bill is effective July 1, 2015.

II. Present Situation:

The Senior Management Service Class (SMSC) of the Florida Retirement System (FRS) was established initially on February 1, 1987.[1] The SMSC consists of state and local government employees who are statutorily defined as members of the SMSC or fill full-time positions designated by the local employers as having managerial or policymaking responsibilities. As of

[1] Section 121.055, F.S.

June 30, 2014, there were 7,607 active members in the SMSC,[2] comprising roughly 1.2 percent of the active FRS membership.

The SMSC includes the following local government positions:

- Presidents of each community college;[3]
- Managers of each participating municipality or county;[4]
- Appointed district school superintendents;[5]
- Executive director or staff director of any metropolitan planning organization participating in the FRS;[6]
- Up to 10 nonelective full-time positions to be designated by each local agency employer;[7] and
- For local agencies with 100 or more regularly established positions, additional nonelective full-time positions to be designated but not to exceed 1 percent of the regularly established positions within the agency.[8]

To be included in the SMSC, the positions designated by the local agency employer must be managerial or policymaking positions. The employee filling the position must serve at the pleasure of the local agency employer without civil service protection, and who either (a) heads an organizational unit or (b) has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

The local agency employer must publish the intent to designate positions for inclusion in the Senior Management Service Class once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in ch. 50, F.S. The SMSC eligibility then belongs to the position and the incumbent filling that position.

Once a position is designated as a SMSC position, it is not removed from the SMSC unless the duties and responsibilities of the position change substantially and it no longer meets the requirements for participation in this class of membership.

A local agency employer includes a board of county commissioners; an elected clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections; a community college board of trustees; a district school board; the governing body of a municipality, metropolitan planning organization, or special district.[9]

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[2] Florida Dep't of Management Services, *The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014*, at p. 115, available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.
[3] Section 121.055(1)(b), F.S.
[4] *Id*.
[5] *Id*.
[6] Section 121.055(1)(l), F.S.
[7] Section 121.055(1(b)1.b., F.S.
[8] *Id*.
[9] Section 121.021(42)(a), F.S.

The table below shows the differences between Regular Class membership and SMSC membership in the FRS. If the position is no longer in the SMSC, it will, by default, be within the Regular Class.

	Regular Class	SMSC
Annual Service Credit	1.6 percent to 1.68 percent for each year of service	2 percent for each year of service
Investment Plan Contribution into member account	6.3 percent of salary (including the 3 percent member contribution)	7.67 percent of salary (including the 3 percent member contribution)

III. Effect of Proposed Changes:

This bill allows local agency employers to reassess positions previously designated as SMSC positions. The local employers may request removal of the reviewed positions from the SMSC if done within the six-month period. The change in the designated SMSC positions is effective beginning the month after the notification is received by the division. The bill establishes a SMSC redesignation window every five years.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill allows local governments to review and redesignate their positions covered by the SMSC. It does not change the total number of positions that can be designated and does not require local agency employers to reassess any positions. All changes are prospective.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under CS/SB 1054, the six-month window in 2015 and each five years thereafter creates a temporary increase in agency workload. The time to process these requests for removal, redesignation, and other related SMSC changes by the division is estimated at 20 hours per week for the six-month processing period. The estimated cost is $18,900 in staff overtime to accommodate this periodic increase in workload.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.055 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 March 10, 2015:
Eliminates the restriction that the position be vacant at the time the position is removed from the Senior Management Service Class.

B. Amendments:

None.

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

[10] Dep't of Management Services, *Legislative Bill Analysis for SB 1054*, at 3 (Feb. 27, 2015).

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

585-02130-15 20151054c1

A bill to be entitled

An act relating to retirement; amending s. 121.055, F.S.; authorizing local agency employers to reassess designation of positions for inclusion in the Senior Management Service Class; providing for removal of certain positions; providing an effective date.

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

Section 1. Subsection (2) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(2)(a) Participation in this class shall cease when the member terminates employment in an eligible position. Once a position is designated as eligible for inclusion in the class, that position may ~~shall~~ not be removed from the class unless the duties and responsibilities of the position change substantially and therefore no longer meet the requirements provided in this section for participation in the class, except as provided in paragraph (b).

(b) Beginning ~~Effective~~ July 1, 2015 ~~1997~~, and every 5 years thereafter, each local agency employer may, between July 1~~, 1997,~~ and December 31~~, 1997~~, reassess its designation of positions for inclusion in the Senior Management Service Class as provided in paragraph (1)(b), and may request removal from the class of any such positions that it deems appropriate. The

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

585-02130-15 20151054c1

~~such~~ removal of any previously designated positions is ~~shall be~~ effective on the first day of the month following written notification of removal to the division before ~~prior to~~ January 1~~, 1998~~.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lee
Chair, Appropriations Committee

Subject: Committee Agenda Request

Date: March 23, 2015

I respectfully request that **Senate Bill 1054,** relating to Retirement, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Greg Evers

Senator Greg Evers
Florida Senate, District 2

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

1054
Bill Number (if applicable)

Topic Support SB 1054

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address _____ Phone 577-0444
Street

Tallahassee FL 32301 Email Chansen@ballardfl.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Association of Florida Colleges

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)

3-9-15
Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1054

Name Stephen Schroeder

Job Title General Counsel / Exec. Dir. Gov Affairs

Address 10230 Ridge Rd.
Street

Phone 727-207-0313

New Port Richey FL 34654
City *State* *Zip*

Email schroes@phsc.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PASCO-Hernando State College

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

1054
Bill Number (if applicable)

Topic Retirement

Amendment Barcode (if applicable)

Name Brittany Dover

Job Title Deputy legislative Affairs

Address 3900 Commonwealth Blvd
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DEP

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)

4/9/15
Meeting Date

1054
Bill Number (if applicable)

Topic Retirement

Amendment Barcode (if applicable)

Name Andrew Rutledge

Job Title Legislative Affairs Director

Address 81 Water Management Dr
Street

Havana FL 32333
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Northwest Florida Water Management District

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1114
INTRODUCER:	Community Affairs Committee and Senator Stargel
SUBJECT:	Membership Associations that Receive Public Funds
DATE:	April 8, 2015
REVISED:	04/10/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Fav/CS**
2.	Clodfelter	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114 prohibits a not for profit corporation whose membership includes a majority of elected or appointed public officers and which receives 25 percent or more of its annual revenue from public funds from expending any money received from public funds on litigation against the state. It also requires such organizations to file an annual report with the Legislature.

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

This bill provides an effective date of July 1, 2015.

II. Present Situation:

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.[1] The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.[2] The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political,

[1] Chapter 90-179, L.O.F.
[2] Section 617.0301, F.S.

religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.[3]

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.[4] Officers and directors of certain not for profit corporations also are protected by the same immunity from civil liability provided to directors of for profit corporations.[5] Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.[6]

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.[7]

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose."[8] The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.[9]

[3] *Id.*
[4] *See* ss. 617.0302 and 607.0302, F.S.
[5] *See* ss. 617.0834 and 607.0831, F.S.
[6] *See* 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.
[7] Section 617.1622, F.S.
[8] Section 215.85(3)(b), F.S.
[9] *See, e.g.*, Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).

III. Effect of Proposed Changes:

Section 1 creates s. 617.221, F.S., to prohibit certain membership associations from expending any money received from public funds on litigation against the state. The bill also requires the membership associations to file an annual report with the Legislature covering the following topics:

- The name and address of the membership association and any parent association, or a state, national or international association with which it is affiliated.
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the association.
- The fee required to become a member of the membership association, if any, and the annual dues that each member must pay.
- The latest annual financial statements of the membership association as described in s. 617.1605, F.S.
- A copy of the current constitution and bylaws of the association.
- The assets and liabilities of the association at the beginning and end of the preceding fiscal year.
- The salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 total from the association and any other state, national, or international membership association affiliate.
- The annual dollar amount of the following benefit packages paid to each of the principal officers of the association:
  - Health, major medical, vision, dental, and life insurance.
  - Retirement plans.
  - Automobile allowances.
- The amount of annual dues per member sent from the association to each state, national, or international affiliate.
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement.
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill defines a membership association for purposes of this section as "a corporation not for profit, including a department or division of such corporation, whose membership includes a majority of elected or appointed public officers, as defined in s. 112.313(1), and which receives 25 percent or more of its annual revenue from public funds, as defined in s. 215.85(3). The term does not include a labor organization as defined in s. 447.02."

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill applies to membership associations organized as a corporation not for profit but does not apply to membership associations organized as a corporation for profit. As such, it may violate the constitutional right of equal protection under the United States Constitution. Unlike the federal Equal Protection Clause, Florida's constitutional right to equal protection only applies to natural persons.[10]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1114 may have an indeterminate negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

C. Government Sector Impact:

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 617.221 of the Florida Statutes.

[10] Article I, Section 2, Constitution of the State of Florida.

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 March 17, 2015:
Defines a membership association for purposes of this section as "a corporation not for profit, including a department or division of such corporation, whose membership includes a majority of elected or appointed public officers, as defined in s. 112.313(1), and which receives 25 percent or more of its annual revenue from public funds, as defined in s. 215.85(3). The term does not include a labor organization as defined in s. 447.02."

Requires the association to file a report that includes the total amount of direct or indirect disbursements made by the association for lobbying activity and the total amount of direct or indirect disbursements for litigation expenses, in addition to all of the requirements in the original bill.

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 Stargel

578-02391-15 20151114c1

A bill to be entitled

An act relating to membership associations that receive public funds; creating s. 617.221, F.S.; defining the term "membership association"; requiring a membership association that receives a specified percentage of its budget from public funds to file an annual report with the Legislature; requiring that such a report provide specified information; prohibiting a membership association from expending public funds on litigation against the state; providing an effective date.

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

Section 1. Section 617.221, Florida Statutes, is created to read:

617.221 Membership associations that receive public funds; reporting requirements; restriction on use of funds.—

(1) As used in this section, the term "membership association" means a corporation not for profit, including a department or division of such corporation, whose membership includes a majority of elected or appointed public officers, as defined in s. 112.313(1), and which receives 25 percent or more of its annual revenue from public funds, as defined in s. 215.85(3). The term does not include a labor organization as defined in s. 447.02.

(2) A membership association shall file a report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must

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Florida Senate - 2015 **CS for SB 1114**

578-02391-15 20151114c1

include:

(a) The name and address of the membership association and any parent membership association or any state, national, or international membership association affiliate.

(b) The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.

(c) The fee required to become a member of the membership association, if any, and the annual dues that each member must pay.

(d) The latest annual financial statements of the membership association as described in s. 617.1605.

(e) A copy of the current constitution and bylaws of the membership association.

(f) The assets and liabilities of the membership association at the beginning and end of the preceding fiscal year.

(g) The salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 total from the membership association and any other state, national, or international membership association affiliate.

(h) The annual dollar amount of the following benefit packages paid to each of the principal officers of the membership association:

1. Health, major medical, vision, dental, and life insurance.

2. Retirement plans.

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

3. Automobile allowances.

(i) The amount of annual dues for each member sent from the membership association to each state, national, or international affiliate.

(j) The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by the full name and address of each person who received a disbursement.

(k) The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

(3) A membership association may not expend moneys received from public funds on litigation against the state.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

March 18, 2015

The Honorable Tom Lee
Senate Appropriations Committee, Chair
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Lee:

I am respectfully requesting that SB 1114, related to *Membership Associations that Receive Public Funds*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 9 /2015
Meeting Date

Topic _____ Bill Number 1119 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1298
INTRODUCER:	Appropriations Committee and Senator Simmons
SUBJECT:	Insurance for Short-term Rental and Transportation Network Companies
DATE:	April 10, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Brown	Cibula	JU	**Favorable**
3.	Betta	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1298 specifies minimum insurance requirements for short-term rental network (STR) and transportation network companies (TNC). The bill requires written notice to lessors and drivers of the insurance provided by the STR and TNC, and requires the insurer to indemnify and defend its insured.

The bill requires a short-term rental network company to carry primary insurance that insures the participating lessor for personal injury and property damage in an amount of at least $1 million of liability coverage. The bill does not limit the liability of a short term rental network company for an amount that exceeds coverage limits.

The bill requires the TNC driver or the TNC on the driver's behalf to maintain the following specified insurance coverage:

- Primary insurance coverage of at least $125,000 for death and bodily injury per person, $250,000 for death and bodily injury per incident; coverage for uninsured and underinsured motorists with at least those limits; $50,000 in property damage liability coverage; and coverage for personal injury protection during the period when the driver is logged on the digital network but not engaged in prearranged ride.
- Primary liability coverage of at least $1 million for death and bodily injury per person, $2 million for death and bodily injury per incident; coverage for uninsured and underinsured motorists with at least those limits; $50,000 in property damage liability coverage; and

coverage for personal injury protection during the period when a driver is engaged in a prearranged ride.

- Primary insurance coverage of at least $100,000 for death and bodily injury per person, $200,000 for death and bodily injury per incident, coverage for uninsured and underinsured motorists with at least those limits; $50,000 in property damage liability coverage; and coverage for personal injury protection during all other times. The coverage must be maintained for six months after the driver has had an arrangement to provide transportation services to riders.

The TNC insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation and short-term rentals, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages.

Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire. Short-term rental companies (STRs), such as Airbnb, use the Internet or smartphone applications to connect potential hosts who wish to rent their homes or rooms in their homes with persons who desire short-term rentals.

Short-term Rental (STR) Networks

Many homeowner policies exclude from coverage losses that occur when the home is used for business purposes. This exclusion can lead to situations in which homeowners who use their homes for short-term rentals are subject to liability claims without liability insurance. Short-term rental networks are dealing with the issue in different ways. One company advertises an insurance product that replaces homeowner coverage and provides short-term rental coverage as well.[1] Another provides coverage as part of its agreement with clients as secondary coverage.[2] However, some homeowner policies cover short-term rentals in certain situations.[3] According to the Office of Insurance Regulation, at least one property insurer in the state allows short term rentals of one-to-three weeks with eligibility subject to an underwriting evaluation and an additional $50 premium. In contrast, the Florida Hurricane Catastrophe Fund (FHCF) will not

[1] *See* HomeAway, *Do I need a special vacation rental insurance policy for my property?* http://help.homeaway.com/articles/en_US/Article/Do-I-need-a-special-vacation-rental-insurance-policy-for-my-property(last visited March 28, 2015).
[2] *See* Airbnb, *Host Protection Insurance*, https://www.airbnb.com/host-protection-insurance (last visited March 28, 2015).
[3] *See* Ron Lieber, *A Liability Risk for Airbnb Hosts*, THE NEW YORK TIMES, (December 5, 2014) http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html.

provide coverage if a property is rented for six or more rental periods to different renters in a 12-month period.[4]

A number of cities and counties regulate short-term rentals by imposing restrictions, requiring licensing, and charging taxes. The city of St. Helena, California, adopted perhaps the most restrictive ordinance on short-term rentals, short of an outright ban. Under the ordinance, short-term rentals must have a permit. Permit applicants must submit an application containing a floor plan of the property, a non-refundable fee of $1,075, and a $200 fee for a mailing list and labels for the planning department to notify neighbors. Proof of a fire inspection, subject to reinspection annually, is also required. If 30 percent of neighbors file a written protest, the planning commission will hold a hearing to review the application. Once issued, a permit for a short-term rental is valid for two years.

The ordinance also imposes conditions on properties used as short-term rentals and their owners. For example, the rental must provide at least two on-site parking spaces, the property may not be a multi-family unit, and the owner must include house policies in rental agreements which are posted in each guest bedroom. Owners must collect and remit to the city a 12 percent transient occupancy tax.[5]

Transportation Network Companies (TNC)

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application that indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. Six states so far, California, Colorado, Illinois, Kentucky, Rhode Island, and Virginia, along with Washington, D.C., have enacted legislation regarding transportation network companies.[6]

---

[4] Office of Insurance Regulation, *2015 Agency Legislative Bill Analysis* (March 9, 2015).

[5] MUN. CODE CHAPTER 17.134, St. Helena, CA; Other cities and counties that regulate short-term rentals include: Austin, TX (requires all persons who wish to provide short-term rentals for less than 30 consecutive days to possess an operating license, provide notice to adjacent neighbors through the planning department, and submit a $285 application fee (ORD. NO. 20130926-144)); Monterey County (requires an administrative permit, minimum rentals of 7 consecutive days or the longer if specified in the property covenants or conditions, and provides that a person who violates the ordinance is subject to a misdemeanor charge (ORD. NO. 21.64.280)); Maui County (prohibits short-term rentals outside of the hotel district and imposes a $1,000 fine for violations, along with a daily fine of up to $1,000 (MAUI CTY. CODE CH. 19.37)); Pacific County (requires licensing and collection of local taxes, including the local lodging tax (PACIFIC CTY. ORD. NO. 162)). National Conference of State Legislatures (NCSL), E-mail from Erica Michel (Mar. 26, 2015) (on file with the Senate Committee on Judiciary).

[6] National Conference of State Legislatures (NCSL), *State TNC Regulatory Actions 2014-2015* (March 23, 2015) (on file with the Senate Committee on Judiciary).

Drivers generally use their personal vehicles and most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[7] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises that its policy provides from the moment a driver accepts a trip to its conclusion, $1 million of liability per incident, $1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the vehicle.[8] Coverage provided by ridesharing companies is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not.

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[9]

III. Effect of Proposed Changes:

The bill specifies minimum insurance requirements on short-term rentals and transportation network companies. A short-term rental network (STR) company is an online website, such as airbnb.com, which facilitates rentals of private lodgings ranging from the rental of a room in a home to an entire house or apartment. A transportation network company (TNC) website, such as uber.com, connects persons who need transportation by vehicle to private drivers.

Short-Term Rental Network Company Insurance

The bill defines the following terms:

- An application is an Internet-enabled application or platform owned or used by a short-term rental network company or any similar method of providing rental services to a participating renter.
- A participating lessor is a person who makes a short-term rental property available through an application to participating renters.
- A short-term rental network company is an entity for which participating lessors provide prearranged, short-term rentals for compensation using an application to connect a participating renter with a participating lessor.
- A short-term rental property can be all or part of a condominium, an apartment, a multifamily dwelling, a single family structure, or any other rental unit.

The bill requires short-term rental network companies to carry insurance that:

- Is primary.
- Insures the participating lessor against direct physical loss to the property and its contents, exclusive of the property of the renter, with limits equal to any multi- or named-peril property insurance maintained by the lessor.

[7] The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance" contained in s. 627.041, F.S.
[8] *See* Uber, *Insurance for Uberx with Ridesharing*, (February 10, 2014) http://blog.uber.com/ridesharinginsurance and Uber, *Eliminating Ridesharing Insurance Ambiguity*, (February 14, 2014) http://blog.uber.com/uberXridesharinginsurance.
[9] *See* s. 324.032(1), F.S.

- Provides liability coverage for personal injury and property damage with limits of at least $1 million to cover the short-term rental network company, a lessor, and persons using or occupying the property. The liability coverage may not contain an exclusion for co-insureds.
- May not require as a prerequisite of coverage that another insurance policy be primary or first deny a claim.

The bill does not limit liability of a short-term rental network company for an amount that exceeds coverage limits.

The bill requires a short-term rental network company to provide written notice to a participating lessor relating to insurance coverage. The notice must:
- Inform the participating lessor of the insurance coverages and limits of liability that the short-term rental network company provides during the short-term rental period.
- Advise the participating lessor in writing that the participating lessor's personal insurance policy may not provide the insurance coverage required by the bill.

The bill requires an insurer that provides short-term rental network company insurance to defend and indemnify the insured.

During the short-term rental period, the participating lessor's personal insurance policy for the short term rental property may not:
- Be required to provide primary or excess coverage.
- Provide any coverage to the participating lessor, the participating renter, or a third party unless the policy expressly provides this coverage.
- Provide a duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy expressly provides.

Before or after the rental period, the lessor's personal policy for the rental property may not provide coverage for claims arising from any rental arrangement entered into by a renter with the company or the lessor for the property or for acts and omissions related to the rental arrangement unless the policy provides for such coverage.

The bill requires a short-term rental network company or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the number and duration of all short-term rental periods made with respect to the short-term rental property for the 12 months preceding the date of loss.

Transportation Network Company Insurance

This bill defines a TNC as an entity which uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. The bill provides that a TNC may not be deemed to control, direct, or manage the personal vehicles or TNC drivers that connect to its digital network, unless agreed to in a written contract. A TNC does not include an entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

The bill defines "prearranged ride" as the provision of transportation by a driver to or on behalf of a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the driver transports the rider, and ending when the last rider has exited the vehicle.

The bill requires TNC driver, or a TNC on the driver's behalf, to maintain primary automobile liability insurance. The bill creates three time periods during which coverage must be maintained.

During the time the driver is logged on to the digital network and is available to receive transportation requests, the insurance must provide:

- Liability coverage of at least $125,000 for death and bodily injury per person, $250,000 for death and bodily injury per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S.
- $50,000 coverage for property damage.

During the time that a TNC driver is engaged in a prearranged ride, the insurance must provide:

- Liability coverage of at least $1 million for death and bodily injury per person and $2 million per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S. and
- $50,000 coverage for property damage.

At all other times if a driver has or, within the previous 6 months has had, an agreement with a TNC to provide transportation to riders, the insurance must provide:

- Liability coverage of at least $100.000 for death and bodily injury per person and $200,000 per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S. and
- $50,000 coverage for property damage.

Coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both. If a driver fails to continuously maintain the required insurance, the TNC must provide it. The TNC insurance policy may not require as a condition of coverage that coverage first be denied under another motor vehicle insurance policy.

The insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

The bill requires a participating driver to carry proof of TNC insurance coverage at all times during the use of a motor vehicle in connection with an application. If the participating driver is involved in an accident, the driver shall provide insurance coverage information to any party involved in the accident and to a police officer. A TNC driver involved in an accident must

disclose whether the driver was logged on to the digital network or engaged in a prearranged ride.

The bill requires a TNC to disclose in writing to a participating driver the insurance coverage and limits of liability the company provides when the driver uses a motor vehicle in connection with an application. The TNC must also disclose the coverage that the driver must maintain.

The bill requires an insurer that provides TNC insurance to defend and indemnify the insured.

The bill provides that an insurer that provides personal automobile insurance policies may exclude from coverage any loss or injury that occurs while the driver is logged on to the digital network or engaged in a prearranged ride. An insurer may voluntarily elect to provide such coverage. If coverage is excluded, the insurer does not have a duty to defend the insured and has a right of contribution against other insurers if it defends an excluded claim.

The bill requires the TNC or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the date and time at which the accident occurred which involved a participating driver and the precise times that the driver logged on and off the application.

The bill provides that the Office of Insurance Regulation may adopt rules to implement its provisions relating to TNCs and TNC insurance requirements.

This bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1298 imposes insurance requirements on STRs and TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs onto their customers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The effective date of the bill is July 1, 2015. Whether insurers will be able to offer the required policies by that date is unknown.

The bill does not contain enforcement provisions if TNC companies do not comply with the insurance requirements.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 627.716 and 627.748.

IX. Additional Information:

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

CS by Appropriations on April 9, 2015:
The committee substitute requires the TNC driver or the TNC on the driver's behalf to maintain primary insurance coverage of at least $100,000 for death and bodily injury per person, $200,000 for death and bodily injury per incident, coverage for uninsured and underinsured motorists, and coverage for personal injury protection during all times other than when the driver is on a prearranged ride or when the driver is logged on to the application but does not have a prearranged ride. The coverage must be maintained for six months after the driver has had an arrangement to provide transportation services to riders.

The committee substitute provides that the insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment

Delete lines 66 - 84
and insert:
portion of a property which is used for residential occupancy purposes. Such property includes, but is not limited to, a condominium, an apartment, a multifamily dwelling, a single-family structure, or any other rental unit located in this state which is owned or rented by a participating lessor.
(2)(a) During the short-term rental period, a short-term

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rental network company shall maintain short-term rental network company insurance that is primary and that:

1. Insures the participating lessor against direct physical loss to the short-term rental property and its contents, exclusive of the property of the participating renter, with limits equal to any multiperil or named-peril property insurance maintained by the participating lessor.

2. Provides liability coverage for personal injury and property damage with limits of at least $1 million which covers the acts and omissions of the short-term rental network company, a participating lessor, and all persons using or occupying the short-term rental property and which does not contain an exclusion for co-insureds.

(b) Short-term rental network company insurance may not require as a prerequisite of coverage that another insurance policy be primary or first deny a claim.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2015	.	
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The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 132 - 241

and insert:

(a) "Digital network" means an online-enabled application, software, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers.

(b) "Personal vehicle" means a vehicle that is used by a transportation network company driver in connection with

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providing transportation network company service and that:

1. Is owned, leased, or otherwise authorized for use by the transportation network company driver; and

2. Is not a taxi, jitney, limousine, or for-hire vehicle as defined in s. 320.01(15).

(c) "Prearranged ride" means the provision of transportation by a driver to or on behalf of a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports the rider, and ending when the last rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxi, jitney, limousine, for-hire vehicle as defined in s. 320.01(15), or street hail services.

(d) "Transportation network company" or "company" means a corporation, partnership, sole proprietorship, or other entity operating in this state which uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company may not be deemed to control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network, unless agreed to in a written contract. A transportation network company does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

(e) "Transportation network company driver" or "driver"

means an individual who:

1. Receives connections to potential riders and related services from a transportation network company in exchange for any form of compensation, including payment of a fee to the transportation network company; and

2. Uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation, including payment of a fee.

(f) "Transportation network company rider" or "rider" means an individual who directly or indirectly uses a transportation network company's digital network to connect with a transportation network company driver who provides transportation services to such individual in the driver's personal vehicle.

(2)(a) A transportation network company driver, or a transportation network company on the driver's behalf, shall maintain primary automobile liability insurance that recognizes that the driver is a transportation network company driver or that the driver otherwise uses a personal vehicle to transport riders for compensation. Such primary automobile liability insurance must cover the driver as required under this section, including while the driver is logged on to the transportation network company's digital network and engaged in a prearranged ride.

(b) The following automobile insurance requirements apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests, but

is not engaged in a prearranged ride:

1. Primary automobile liability insurance of at least $125,000 for death and bodily injury per person, $250,000 for death and bodily injury per incident, coverage in an equivalent amount for uninsured and underinsured motorists, and $50,000 for property damage; and

2. Primary automobile insurance that provides the minimum coverage requirements under ss. 627.730-627.7405.

(c) The following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:

1. Primary automobile liability insurance of at least $1 million for death and bodily injury per person, $2 million for death and bodily injury per incident, coverage in an equivalent amount for uninsured and underinsured motorists, and $50,000 for property damage; and

2. Primary automobile insurance that provides the minimum coverage requirements under ss. 627.730-627.7405.

(d) The following automobile insurance requirements apply at all times other than the periods specified in paragraph (b) or paragraph (c) if a driver has or, within the previous 6 months has had, an agreement with a transportation network company to provide any form of transportation services to riders:

1. Primary automobile liability insurance of at least $100,000 for death and bodily injury per person, $200,000 for death and bodily injury per incident, coverage in an equivalent amount for uninsured and underinsured motorists, and $50,000 for property damage; and

2. Primary automobile insurance that provides the minimum coverage requirements under ss. 627.730-627.7405.

(e) The coverage requirements of paragraph (b), paragraph (c), or paragraph (d) may be satisfied by any of the following:

1. Automobile liability insurance maintained by the transportation network company driver;

2. Automobile liability insurance maintained by the transportation network company; or

3. Any combination of subparagraphs 1. and 2.

(f) If automobile insurance maintained by a driver under paragraph (b), paragraph (c), or paragraph (d) has lapsed or does not provide the required coverage, automobile insurance maintained by a transportation network company must provide the coverage required by this section beginning with the first dollar of a claim and must require that the insurer have the duty to defend such claim in this state.

(g) Coverage under an automobile insurance policy maintained by the transportation network company may not be dependent on a personal automobile liability insurance policy first denying a claim.

(h) Automobile insurance required by this section must be provided by an insurer authorized to do business in this state and which is a member of the Florida Insurance Guaranty Association.

(i) Automobile insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirements for a motor vehicle under chapter 324 and the security required under s. 627.733.

(j) A transportation network company driver shall carry

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proof of insurance coverage satisfying paragraphs (b), (c), and (d) at all times during his or her use of a personal vehicle in connection with a transportation network company's digital network. In the event of an accident:

1. The driver shall provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating police officers. Proof of financial responsibility may be provided through a digital telephone application under s. 316.646 controlled by a transportation network company.

2. The driver, upon request, shall disclose to the directly involved parties, automobile insurers, and investigating police officers whether the driver, at the time of the accident, was logged on to the transportation network company's digital network or engaged in prearranged ride.

(k) Before a driver may accept a request for a prearranged ride on the transportation network company's digital network, the transportation network company shall disclose in writing to each transportation network company driver each type of:

1. Insurance coverage and the limit for each coverage the transportation network company provides; and

2. Automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the transportation network company.

(l) An insurer that provides personal automobile insurance policies under part XI of chapter 627 may exclude from coverage under a policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or

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while a driver is engaged in a prearranged ride. Such right to exclude coverage applies to any coverage under an automobile liability insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage.

2. Personal injury protection coverage under s. 627.736.

3. Uninsured and underinsured motorist coverage.

4. Medical payments coverage.

5. Comprehensive physical damage coverage.

6. Collision physical damage coverage.

(m) The exclusions authorized under paragraph (l) apply notwithstanding any financial responsibility requirements under chapter 324. This section does not require that a personal automobile liability insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. However, an insurer may voluntarily elect to provide coverage for such driver's personal vehicle by contract or endorsement.

(n) An insurer that excludes coverage, as authorized under paragraph (l):

1. Does not have a duty to defend or indemnify any claim excluded. This section does not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in this state before July 1, 2015.

2. Has a right of contribution against other insurers that provide automobile liability insurance to the same driver in satisfaction of the coverage requirements of this section at the

time of loss if the insurer defends or indemnifies a claim against a driver which is excluded under the terms of its policy.

(o) In any claims investigation, a transportation network company and any insurer potentially providing coverage for such claim under this section shall cooperate to facilitate the exchange of relevant information with directly involved parties and insurers of the transportation network company driver, if applicable. Such information must provide:

1. The precise times that a driver logged on and off the transportation network company's digital network during the 12-hour period immediately preceding and immediately after the accident.

2. A clear description of the coverage, any exclusions, and limits provided under any automobile liability insurance maintained under this section.

(p) Before allowing an individual to act as a driver on its digital network, a transportation network company shall determine whether the driver's personal vehicle is subject to a lien. If the personal vehicle is subject to a lien, the transportation network company shall verify that the insurance required by this section provides coverage to the lienholder while the driver is logged into the transportation network company's digital network and while the driver is providing a prearranged ride.

(3) The office may adopt rules to implement this section.

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

And the title is amended as follows:

Delete lines 19 - 33

and insert:

627.748, F.S.; defining terms; requiring a transportation network company driver or such company on the driver's behalf, or a combination thereof, to maintain primary automobile liability insurance issued by specified insurers with certain coverages in specified amounts during certain timeframes; requiring the transportation network company to provide automobile insurance in the event insurance maintained by the transportation network company driver lapses or does not provide the required coverage; requiring a transportation network company driver to carry proof of insurance coverage at certain times and to disclose specified information in the event of an accident; requiring a transportation network company to make certain disclosures to transportation network company drivers; authorizing insurers to exclude certain coverages during specified periods for policies issued to transportation network company drivers for personal vehicles; requiring a transportation network company and certain insurers to cooperate during a claims investigation to facilitate the exchange of specified information; requiring a transportation network company to determine whether an individual's personal vehicle is subject to a lien before allowing the individual to act as a driver and, if the vehicle is subject to a lien, to verify that the insurance required by this section provides coverage to the

lienholder during specified periods; authorizing the Office of Insurance Regulation to adopt rules to implement the section;

By Senator Simmons

10-00842A-15 20151298__

A bill to be entitled

An act relating to insurance for short-term rental and transportation network companies; creating s. 627.716, F.S.; defining terms; establishing insurance requirements for short-term rental network companies during certain timeframes; requiring a short-term rental network company to make certain written disclosures to participating lessors; requiring an insurer to defend and indemnify an insured in this state; prohibiting the personal insurance policy of a participating lessor of a short-term rental property from providing specified coverage during certain timeframes except under specified circumstances; requiring a short-term rental network company and its insurer to cooperate with certain claims investigations; providing that the section does not limit the liability of a short-term rental network company under specified circumstances; creating s. 627.748, F.S.; defining terms; establishing insurance requirements for transportation network companies and participating drivers during certain timeframes; requiring a transportation network company to make certain written disclosures to participating drivers; requiring an insurer to defend and indemnify an insured in this state; prohibiting the personal motor vehicle insurance policy of a participating driver from providing specified coverage during certain timeframes except under specified circumstances; requiring a transportation network company and its

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10-00842A-15 20151298__

insurer to cooperate with certain claims investigations; requiring participating drivers to carry proof of insurance coverage; providing for application of certain coverage requirements; providing an effective date.

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

Section 1. Section 627.716, Florida Statutes, is created to read:

627.716 Short-term rental network company insurance.—

(1) For purposes of this section, the term:

(a) "Application" means an Internet-enabled application or platform owned or used by a short-term rental network company or any similar method of providing rental services to a participating renter.

(b) "Participating lessor" means a person who makes a short-term rental property available through an application to participating renters.

(c) "Participating renter" means a person who enters into a short-term rental arrangement through an application.

(d) "Short-term rental network company" or "company" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietorship, or other entity for which participating lessors provide prearranged, short-term rentals for compensation using an application to connect a participating renter with a participating lessor.

(e) "Short-term rental network company insurance" means an

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insurance policy that expressly provides coverage as required by this section at all times during the short-term rental period.

(f) "Short-term rental period" means the period beginning at the time the participating renter first uses or occupies the short-term rental property and ending at the time the participating renter vacates the short-term rental property.

(g) "Short-term rental property" means the entirety or any portion of a residential property, condominium, tenancy in common, apartment, or other rental unit located in this state which is owned or rented by a participating lessor.

(2)(a) During the short-term rental period, a short-term rental network company shall maintain short-term rental network company insurance that is primary and that:

1. Insures the participating lessor against direct physical loss to the short-term rental property and its contents, exclusive of the property of the participating renter, with limits equal to any multi- or named-peril property insurance maintained by the participating lessor.

2. Provides liability coverage for personal injury and property damage with limits of at least $1 million which covers the acts and omissions of the short-term rental network company, a participating lessor, and all persons using or occupying the short-term rental property.

(b) Short-term rental network company insurance may not require as a prerequisite of coverage that another insurance policy first deny a claim.

(3) A short-term rental network company shall disclose in writing to a participating lessor the insurance coverages and limits of liability that the short-term rental network company

provides during the short-term rental period. The company shall advise the participating lessor in writing that the participating lessor's personal insurance policy may not provide the insurance coverage required by subsection (2).

(4) An insurer that provides short-term rental network company insurance shall defend and indemnify in this state the insured in accordance with the policy's provisions.

(5)(a) During the short-term rental period, the participating lessor's personal insurance policy for the short-term rental property may not:

1. Be required to provide primary or excess coverage.

2. Provide any coverage to the participating lessor, the participating renter, or a third party unless the policy, with or without a separate charge, expressly provides for such coverage or contains an amendment or endorsement to provide such coverage.

3. Have any duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy, with or without a separate charge, expressly provides for such duties or contains an amendment or endorsement to provide for such duties.

(b) Before or after the short-term rental period, the participating lessor's personal policy for the short-term rental property may not provide coverage for claims arising from any rental arrangement entered into by a participating renter with the short-term rental company or the participating lessor for the short-term rental property or for acts and omissions related to the rental arrangement unless the policy, with or without a separate charge, provides for such coverage or contains an

amendment or endorsement to provide such coverage.

(6) In a claims investigation, a short-term rental network company or its insurer shall cooperate with other insurers to facilitate the exchange of information, which must include the number and duration of all short-term rental periods made with respect to the short-term rental property for the 12 months preceding the date of loss.

(7) This section does not limit the liability of a short-term rental network company arising out of the use or occupancy of short-term rental property by a participating renter for an amount that exceeds the limits specified in subsection (2).

Section 2. Section 627.748, Florida Statutes, is created to read:

627.748 Transportation network company insurance.—

(1) For purposes of this section, the term:

(a) "Application" means an Internet-enabled application or platform owned or used by a transportation network company or any similar method for providing transportation services to a passenger.

(b) "On-call period" means the period beginning at the time the driver:

1. Logs onto an application and ending at the time the driver accepts a ride request through the application; or

2. Completes a ride request on an application, or the ride is complete, whichever is later, or, if not completed, beginning at the time the ride request is terminated by the driver or requester, and ending at the time the driver accepts another ride request on the application or logs off the application.

(c) "Participating driver" or "driver" means a person who

uses a motor vehicle in connection with an application to connect with a passenger.

(d) "Ride-acceptance period" means the period beginning at the time a driver accepts a ride request made through an application and ending at the time the driver completes the ride request on the application or the ride is completed, whichever is later, or, if not completed, ending at the time the ride request is terminated by the driver or requester.

(e) "Transportation network company" or "company" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietorship, or other entity for which drivers operating a vehicle in this state provide transportation services for compensation using an application to connect a passenger with a participating driver.

(f) "Transportation network company insurance" means an insurance policy that expressly provides coverage for a participating driver's use of a motor vehicle in connection with an application.

(2)(a) During the ride-acceptance period, transportation network company insurance must provide:

1. Liability coverage of at least $1 million for death, bodily injury, and property damage.

2. Uninsured and underinsured motorist coverage of at least $1 million.

3. Personal injury protection as required under s. 627.736.

4. Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

(b) During the on-call period, transportation network company insurance must provide:

1. Liability coverage for death and bodily injury of at least $125,000 per person and $250,000 per incident.

2. Liability coverage for property damage of at least $50,000.

3. Uninsured and underinsured motorist coverage of at least $250,000.

4. Personal injury protection as required under s. 627.736.

5. Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

(c) The coverage requirements of this subsection may be satisfied by transportation network company insurance maintained by a driver, by a company, or, in combination, by both. If the requirement is satisfied by a policy maintained by the driver, the company shall verify that the insurance policy is specifically written to cover the driver's use of a motor vehicle in connection with an application. If a driver fails to continuously maintain the transportation network company insurance required by this subsection, the transportation network company shall provide such insurance.

(d) A transportation network company insurance policy may not require as a prerequisite of coverage that another motor vehicle insurance policy first deny a claim.

(3) A transportation network company shall disclose in writing to a participating driver the insurance coverage and limits of liability the company provides when the driver uses a

motor vehicle in connection with an application. The company shall advise the driver that the personal motor vehicle insurance policy of the driver may not provide the insurance coverage required under subsection (2), except as provided in subsection (5).

(4) An insurer that provides transportation network company insurance shall defend and indemnify in this state the insured in accordance with the policy's provisions.

(5)(a) This section may not be construed to require that a participating driver's personal motor vehicle insurance policy provide primary or excess coverage during the on-call period or the ride-acceptance period.

(b) Unless the policy expressly provides otherwise, with or without a separate charge, or the policy contains an amendment or endorsement to provide such coverage, for which a separately stated premium is charged, the personal motor vehicle insurance policy of the driver or motor vehicle owner may not, during the on-call period or ride-acceptance period, provide any coverage to the driver, motor vehicle owner, or a third party or have a duty to defend or indemnify the driver's activities in connection with the company.

(6) In a claims investigation, a transportation network company or its insurer shall cooperate with other insurers to facilitate the exchange of information, which must include the date and time at which the accident occurred which involved a participating driver and the precise times that the driver logged on and off the application.

(7) A participating driver shall carry proof of transportation network company insurance coverage at all times

during his or her use of a motor vehicle in connection with an application. In the event of an accident, a driver shall, upon request, provide insurance coverage information to any party involved in the accident and to a police officer.

(8) Notwithstanding any law regarding primary or excess policy coverage, this section determines the minimum obligations of an insurance policy issued to a transportation network company and a participating driver using a motor vehicle in connection with an application.

Section 3. This act shall take effect July 1, 2015.

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

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill 1298**, relating to Insurance for Short-term Rental and Transportation Network Companies, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9
Meeting Date

1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic TNC - Insurance

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Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Mears Transportation

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)

4/9/15
Meeting Date

SB 1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic TRANSPORTATION NETWORK COMPANY

Name LARRY WILLIAMS

Job Title ATTORNEY

Address 215 SOUTH MONROE SUITE 601
Street

Phone (850) 510-5306

TALLAHASSEE FL 32301
City *State* *Zip*

Email LWILLIAMS@GUNSTER.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing MEARS TRANSPORTATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/9/15
Meeting Date

1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic TNC Insurance

Name Louis Minardi

Job Title President

Address 4413 N Hesperides St
Street

Tampa FL 33614
City *State* *Zip*

Phone (813) 9179946

Email Louie@yellowcabofTampa.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Taxicab Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/9/15
Meeting Date

SB 51298
Bill Number (if applicable)

707786
Amendment Barcode (if applicable)

Topic INSURANCE - FOR HIRE

Name ANGUS MURRAY

Job Title

Address 199 NW 79 ST
Street

MIAMI FL 33150
City *State* *Zip*

Phone 3057544600

Email

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

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

Representing KEY TRANSPORTATION / MIAMI SPRINGS TAXI

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

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

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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)

4/9/15
Meeting Date

S1298
Bill Number (if applicable)

Topic Insurance for HIRB

107796
Amendment Barcode (if applicable)

Name Jerry Mostow Jr.

Job Title

Address 2284 NW 36th Street
Street

Phone 305 633 2227

Miami FA 33142
City State Zip

Email DRASONTR@KBSGLAW.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

S 1298

Meeting Date | *Bill Number (if applicable)*

707796

Amendment Barcode (if applicable)

Topic INSURANCE - FOR HIRE

Name DIEGO FELICIANO

Job Title

Address 2850 SW 22 Ave

Street

Phone 585-7777 (305)

Miami FL 33142

City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing South Florida Taxicab Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/9/15
Meeting Date

SJ298
Bill Number (if applicable)

Topic INSURANCE FOR-HIRE

707796
Amendment Barcode (if applicable)

Name ROBERT ~~[illegible]~~ RIOS

Job Title

Address 2264 NE 36th Street
Street

Phone 305 6332227

Miami FL 33142
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-9-15
Meeting Date

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

SB 298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic Insurance for Hire

Name Frank Hernandez

Job Title

Address 3111 S.W. 27 Ave Miami FL
Street

Phone 786-288-9878

Miami FL. 33142
City *State* *Zip*

Email FHALou@gmail.com

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

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

Representing

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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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)

Apr. 9, 2015
Meeting Date

1298
Bill Number (if applicable)

787796
Amendment Barcode (if applicable)

Topic TNC INSURANCE

Name Floyd Webb

Job Title Manager - Yellow Cab Tallahassee

Address 3941 W. Pensacola St.
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 850 350-2001

Email FWebb@TallahasseeYel
lowCab.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Yellow Cab Tallahassee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/9/15
Meeting Date

1298
Bill Number (if applicable)

Topic Insurance for Short Term Rental & Transportation...

707796
Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Govt. Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-224-2265

Tallahassee FL 32303
City *State* *Zip*

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04/09/15
Meeting Date

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

1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic Transportation Network Companies

Name Cesar Fernandez

Job Title Public Policy Associate

Address 80 SW 8th St
Street
St. Miami FL
City *State* *Zip*

Phone 786-262-6092

Email fernandez@uber.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Uber Technologies

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/9
Meeting Date

1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic _____

Name Gerald Wester

Job Title _____

Address 101 E College Suite 502
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 8504457256

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/15
Meeting Date

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

1298
Bill Number (if applicable)

707796
Amendment Barcode (if applicable)

Topic _____

Name Katie Webb

Job Title _____

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Property Casualty Ins. Assoc. of America

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 7018 (906328)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Children, Families, and Elder Affairs Committee
SUBJECT:	State Ombudsman Program
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		**CF Submitted as Committee Bill**
1.	Brown	Pigott	AHS	**Recommend: Fav/CS**
2.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7018 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act. The bill revises the appointment process for three at-large positions to the State Long-Term Care Council whereby the appointments are no longer made by the Governor but by the Secretary of the DOEA.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Older Americans Act

The federal Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings. OAA programs are administered through area agencies on aging under the Florida Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be 60 years of age or older. Spouses and disabled adults younger than 60 years

of age may receive services in certain circumstances. Preference is given to elders with the greatest economic or social needs, particularly low-income minority individuals; however, no means testing is allowed. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

Long-Term Care Ombudsman Program

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities, and adult family care homes.

In Florida, a long-term care ombudsman is a volunteer who helps improve the lives of persons who live in long-term care settings by investigating and resolving their complaints against the facility. The LTCOP includes more than 300 volunteers who advocate for persons who reside in long-term care settings.

The LTCOP is administratively housed within the DOEA. The LTCOP seeks to discover, investigate, and determine the presence of conditions which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in a facility which have an impact on the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP has no enforcement or regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. Ombudsmen, after completing specified statutory requirements, are certified as independent advocates, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with the ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by an ombudsman indicating facility conditions that could violate the facility's licensure or be viewed as criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.[1]

In August 2011, the U.S. Department of Health and Human Services' Administration on Aging issued its Compliance Review of the State of Florida Long-Term Ombudsman Program[2] The review identified the State of Florida's policies and practices regarding the designation of local ombudsmen, legislative advocacy, and information dissemination as out of compliance with the OAA. Statutory changes are necessary to bring state law into conformity with federal law.

[1] Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[2] Administration on Aging, Department of Health and Human Services, *Compliance Review of the State of Florida Long-Term Care Ombudsman Program* (August 30, 2011)(on file with the Senate Committee on Children, Families, and Elder Affairs).

III. Effect of Proposed Changes:

Section 1 amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "long-term care facility," and "ombudsman" are updated. The term "representative of the State Long Term Care Ombudsman Program" is defined to include the state ombudsman, employees, and certified ombudsmen. The term "state ombudsman" is defined as the person appointed by the secretary of DOEA to administer the ombudsman program. The term "resident" is revised to include persons over 18 years of age who reside in a long-term care facility. The term "district" refers to geographical areas in the state designated by the state ombudsman. The bill specifies that each district may have more than one local unit of ombudsmen.

Section 2 amends s. 400.0061, F.S., which provides legislative findings and intent, to conform existing text to newly-defined terms.

Section 3 amends s. 400.0063, F.S., which establishes the office of state ombudsman, to conform existing text to newly-defined terms.

Section 4 amends s. 400.0065, F.S., relating to duties of the Long-Term Care Ombudsman Program, to give the state long-term care ombudsman the final authority to make and rescind appointments of individuals serving as ombudsmen; to update the list of individuals to whom the state ombudsman must submit the annual ombudsman program report; and to revise terminology to conform to new definitions.

Section 5 amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments to the three at-large positions on the council are made by the Governor. Under the bill, each local council in a district must select an ombudsman to serve as a representative to the state council. The state ombudsman will submit the names to the Secretary of the DOEA, who will make the appointments to the three at-large positions on the state council.

Section 6 amends 400.0069, F.S., relating to districts and local ombudsman councils. The state ombudsman will designate districts and each district will designate a local council. The bill provides for development of family councils within facilities; clarifies that ombudsmen, upon good cause shown and with their approval, may serve in a different district; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The bill also requires each district to convene a public meeting at least quarterly. The bill provides that ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of a resident.

Section 7 amends s. 400.0070, F.S., relating to ombudsman conflicts of interest, to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to investigations and resolution of complaints concerning the health, safety, welfare and rights of residents. The bill removes references to the administrative assessment process from the complaint process.

Section 9 amends s. 400.0073, F.S., relating to complaint investigations, access to long-term care facilities by ombudsmen, reporting procedures in the event access is denied to the facility or a resident, and conforms to newly-defined terms.

Section 10 amends s. 400.0074, F.S., to provide an on-site administrative assessment at least annually which must be resident-centered and must focus on the rights, health, safety, and welfare of the residents. The assessment must not impose an unreasonable burden on the long-term care facility. The bill moves the rulemaking authority from s. 400.072, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolutions and the notification process in the event of imminent danger to the health, safety, welfare or rights of a resident, to conform to newly-defined terms and to clarify complaint reporting procedures.

Section 12 revises s. 400.0078, F.S., relating to access to the ombudsmen, to add email as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families upon being admitted to the facility that retaliation against residents making complaints to the ombudsman is prohibited by law.

Section 13 amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

Section 14 amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, including access to medical and social records of a resident as necessary to resolve a complaint. This bill also provides conformity to newly-defined terms and deletes the limitation that ombudsmen have access to residents only for investigating a complaint.

Section 15 amends s. 400.0083, F.S., relating to interference with the ombudsman, to make technical and conforming changes.

Section 16 amends s. 400.0087, F.S., relating to oversight of the ombudsman program by the DOEA, to make technical and conforming changes.

Section 17 amends 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

Section 18 amends s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and to make conforming changes.

Sections 19 through 40 amend ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, F.S., to conform to newly-defined terms and to make technical changes.

Section 41 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on March 11, 2015:
The committee substitute requires local councils in districts designated by the state ombudsman to convene public meetings at least quarterly, instead of every quarter or as needed.

B. Amendments:

None.

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


906328

576-02161-15

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the state ombudsman program; amending s. 400.0060, F.S.; revising and defining terms; amending s. 400.0061, F.S.; revising legislative intent with respect to citizen ombudsmen; deleting references to ombudsman councils and transferring their responsibilities to representatives of the Office of State Long-Term Care Ombudsman; amending s. 400.0063, F.S.; revising duties of the office; amending s. 400.0065, F.S.; revising the purpose of the office; revising the duties and authority of the state ombudsman; requiring the state ombudsman to submit an annual report to the Governor, the Legislature, and specified agencies and entities; amending s. 400.0067, F.S.; revising duties and membership of the State Long-Term Care Ombudsman Council; amending s. 400.0069, F.S.; requiring the state ombudsman to designate and direct program districts; requiring each district to conduct quarterly public meetings; providing duties of representatives of the office in the districts; revising the appointments of and qualifications for district ombudsmen; prohibiting certain individuals from serving as ombudsmen; amending s. 400.0070, F.S.; providing conditions under which a representative of the office could be found to have a conflict of interest; requiring the Department of Elderly Affairs,


906328

576-02161-15

in consultation with the state ombudsman, to define by rule what constitutes a conflict of interest; amending s. 400.0071, F.S.; requiring the Department of Elderly Affairs to consult with the state ombudsman to adopt rules pertaining to complaint procedures; amending s. 400.0073, F.S.; providing procedures for investigation of complaints; amending s. 400.0074, F.S.; revising procedures for conducting onsite administrative assessments; authorizing the department to adopt rules; amending s. 400.0075, F.S.; revising complaint notification and resolution procedures; amending s. 400.0078, F.S.; providing for a resident or representative of a resident to receive additional information regarding resident rights; amending s. 400.0079, F.S.; providing immunity from liability for a representative of the office under certain circumstances; amending s. 400.0081, F.S.; requiring long-term care facilities to provide representatives of the office with access to facilities, residents, and records for certain purposes; amending s. 400.0083, F.S.; conforming provisions to changes made by the act; amending s. 400.0087, F.S.; providing for the office to coordinate ombudsman services with Disability Rights Florida; amending s. 400.0089, F.S.; conforming provisions to changes made by the act; amending s. 400.0091, F.S.; revising training requirements for representatives of the office and ombudsmen; amending ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.191, and 400.23, F.S.;

conforming provisions to changes made by the act; amending s. 400.235, F.S.; conforming provisions to changes made by the act; revising the additional criteria for recognition as a Gold Seal Program facility; amending ss. 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, 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. Section 400.0060, Florida Statutes, is amended to read:

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

(1) "Administrative assessment" means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Department" means the Department of Elderly Affairs.

(4) "District" means a geographical area designated by the state ombudsman in which individuals certified as ombudsmen carry out the duties of the State Long-Term Care Ombudsman Program. A district may have one or more local councils.

(5) ~~(4)~~ "Local council" means a local long-term care

ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils.

(6) ~~(5)~~ "Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.

(7) ~~(6)~~ "Office" means the Office of the State Long-Term Care Ombudsman Program created by s. 400.0063.

(8) ~~(7)~~ "Ombudsman" means an individual who has been certified by the state ombudsman as meeting the requirements of ss. 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the Secretary of Elderly Affairs to head the Office of State Long-Term Care Ombudsman~~.

(9) "Representative of the State Long-Term Care Ombudsman Program" means the state ombudsman, an employee of the state or district office certified as an ombudsman or an individual certified as an ombudsman serving on the state or a local council.

(10) ~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age or older who resides in a long-term care facility.

(11) ~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

(12) ~~(10)~~ "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

(13) "State ombudsman" means the State Long-Term Care Ombudsman, who is the individual appointed by the Secretary of Elderly Affairs to head the State Long-Term Care Ombudsman Program.

(14) "State ombudsman program" means the State Long-Term

Care Ombudsman Program operating under the direction of the State Long Term Care Ombudsman.

Section 2. Section 400.0061, Florida Statutes, is amended to read:

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees~~,~~ or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to use ~~utilize~~ voluntary citizen ombudsman councils under the leadership of the State Long-Term Care Ombudsman ~~ombudsman,~~ and,

through them, to operate a state ~~an~~ ombudsman program, which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals that ~~which~~ constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the representatives of the State Long-Term Care Ombudsman Program ~~ombudsman and ombudsman councils and their designated representatives~~ not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by representatives of the State Long-Term Care Ombudsman Program ~~ombudsman councils~~ shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

Section 3. Section 400.0063, Florida Statutes, is amended to read:

400.0063 Establishment of the ~~Office of~~ State Long-Term Care Ombudsman Program; designation of ombudsman and legal advocate.—

(1) There is created the ~~an Office of~~ State Long-Term Care Ombudsman Program in the Department of Elderly Affairs.

(2)(a) The ~~Office of~~ State Long-Term Care Ombudsman Program shall be headed by the State Long-Term Care Ombudsman, who shall serve on a full-time basis and shall personally, or through

representatives of the program ~~office~~, carry out its ~~the~~ purposes and functions ~~of the office~~ in accordance with state and federal law.

(b) The state ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs. The secretary shall appoint a person who has expertise and experience in the fields of long-term care and advocacy to serve as state ombudsman.

(3)(a) There is created in the office the position of legal advocate, who shall be selected by and serve at the pleasure of the state ombudsman and shall be a member in good standing of The Florida Bar.

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the state ombudsman in carrying out the duties of the office with respect to the abuse, neglect, exploitation or violation of rights of residents of long-term care facilities.

2. Assisting the representatives of the State Long-Term Care Ombudsman Program ~~state and local councils~~ in carrying out their responsibilities under this part.

3. Pursuing administrative, legal, and other appropriate remedies on behalf of residents.

4. Serving as legal counsel to the representatives of the State Long-Term Care Ombudsman Program in ~~state and local councils, or individual members thereof, against whom~~ any suit or other legal action that is initiated in connection with the performance of the official duties of the representatives of the State Long-Term Care Ombudsman Program ~~councils or an individual~~

~~member~~.

Section 4. Section 400.0065, Florida Statutes, is amended to read:

400.0065 State Long-Term Care Ombudsman Program; duties and responsibilities.—

(1) The purpose of the ~~Office of~~ State Long-Term Care Ombudsman Program is ~~shall be~~ to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services that assist in protecting the health, safety, welfare, and rights of residents.

(c) Inform residents, their representatives, and other citizens about obtaining the services of the State Long-Term Care Ombudsman Program and its representatives.

(d) Ensure that residents have regular and timely access to the services provided through the State Long-Term Care Program ~~office~~ and that residents and complainants receive timely responses from representatives of the State Long-Term Care Program ~~office~~ to their complaints.

(e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Administer the state and local councils.

(g) Analyze, comment on, and monitor the development and

implementation of federal, state, and local laws, rules, and regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, and recommend any changes in such laws, rules, regulations, policies, and actions as the office determines to be appropriate and necessary.

(h) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

(2) The State Long-Term Care Ombudsman has ~~shall have~~ the duty and authority to:

(a) Establish and coordinate districts and local councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of appropriated federal and state funding, employ such personnel ~~as are~~ necessary to perform adequately the functions of the office and provide or contract for legal services to assist the representatives of the State Long-Term Care Ombudsman Program ~~state and local councils~~ in the performance of their duties. Staff positions established for the purpose of coordinating the activities of each local council and assisting its members may be filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person shall be considered a representative of the State Long-Term Care

Ombudsman Program for purposes of this part.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Coordinate, to the greatest extent possible, state and local ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

~~(g) Enter into a cooperative agreement with the Statewide Advocacy Council for the purpose of coordinating and avoiding duplication of advocacy services provided to residents.~~

(g) ~~(h)~~ Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of the Older Americans Act.

(h) ~~(i)~~ Prepare an annual report describing the activities carried out by the office, the state council, the districts and the local councils in the year for which the report is prepared. The state ombudsman shall submit the report to the secretary, the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Families, and the Secretary of the Agency for Health Care Administration at least 30 days before the convening of the regular session of the Legislature. ~~The secretary shall in turn submit the report to~~

~~the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Families, and the Secretary of Health Care Administration.~~ The report must ~~shall~~, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities and the disposition of such complaints.

2. Evaluate the problems experienced by residents.

3. Analyze the successes of the State Long-Term Care Ombudsman Program ~~ombudsman program~~ during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

4. Provide recommendations for policy, regulatory, and statutory changes designed to solve identified problems; resolve residents' complaints; improve residents' lives and quality of care; protect residents' rights, health, safety, and welfare; and remove any barriers to the optimal operation of the State Long-Term Care Ombudsman Program.

5. Contain recommendations from the State Long-Term Care Ombudsman Council regarding program functions and activities and recommendations for policy, regulatory, and statutory changes designed to protect residents' rights, health, safety, and welfare.

6. Contain any relevant recommendations from the representatives of the State Long-Term Care Ombudsman Program ~~local councils~~ regarding program functions and activities.

Section 5. Section 400.0067, Florida Statutes, is amended to read:

400.0067 State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the ~~Office of~~ State Long-Term Care Ombudsman Program, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Serve as an advisory body to assist the state ombudsman in reaching a consensus among districts and local councils on issues affecting residents and impacting the optimal operation of the program.

(b) Serve as an appellate body in receiving from the districts or local councils complaints not resolved at the district or local level. Any individual member or members of the state council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility, and work with the adult protective services program as required in ss. 415.101-415.113.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of residents.

(e) Elicit and coordinate state, district, local, and voluntary organizational assistance for the purpose of improving the care received by residents.

(f) Assist the state ombudsman in preparing the annual report described in s. 400.0065.

(3) The State Long-Term Care Ombudsman Council consists

~~shall be composed~~ of one active certified ombudsman from each local council in a district ~~member elected by each local council~~ plus three at-large members ~~appointed by the Governor~~.

(a) Each local council in a district must select ~~shall elect by majority vote~~ a representative of its choice to serve ~~from among the council members to represent the interests of the local council~~ on the state council. ~~A local council chair may not serve as the representative of the local council on the state council.~~

(b)1. The state ombudsman ~~secretary~~, ~~after consulting with the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of individuals ~~persons~~ recommended for appointment to the at-large positions on the state council. The list may ~~shall~~ not include the name of any individual ~~person~~ who is currently serving in a district ~~on a local council~~.

2. The secretary ~~Governor~~ shall appoint three at-large members chosen from the list.

~~3. If the Governor does not appoint an at-large member to fill a vacant position within 60 days after the list is submitted, the secretary, after consulting with the ombudsman, shall appoint an at-large member to fill that vacant position.~~

(4)(a) ~~(c)~~1. ~~All~~ state council members shall serve 3-year terms.

2. A member of the state council may not serve more than two consecutive terms.

3. A local council may recommend replacement ~~removal~~ of its selected ~~elected~~ representative from the state council ~~by a majority vote~~. If the council votes to replace ~~remove~~ its representative, the local council chair shall immediately notify

the state ombudsman. ~~The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman.~~

4. The position of any member missing three state council meetings within a 1-year period without cause may be declared vacant by the state ombudsman. The findings of the state ombudsman regarding cause shall be final and binding.

(b) ~~5.~~ Any vacancy on the state council shall be filled in the same manner as the original appointment.

(c) ~~(d)~~1. The state council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms.

2. The chair shall select a vice chair from among the members. The vice chair shall preside over the state council in the absence of the chair.

3. The chair may create additional executive positions as necessary to carry out the duties of the state council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

4. A chair may be immediately removed from office before ~~prior to~~ the expiration of his or her term by a vote of two-thirds of all state council members present at any meeting at which a quorum is present. If a chair is removed from office before ~~prior to~~ the expiration of his or her term, a replacement chair shall be chosen during the same meeting in the same manner as described in this paragraph, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term and is eligible to serve two

subsequent consecutive terms.

(d) ~~(c)~~1. The state council shall meet upon the call of the chair or upon the call of the state ombudsman. The state council shall meet at least quarterly but may meet more frequently as needed.

2. A quorum shall be considered present if more than 50 percent of all active state council members are in attendance at the same meeting.

3. The state council may not vote on or otherwise make any decisions resulting in a recommendation that will directly impact the state council, the district, or any local council, outside of a publicly noticed meeting at which a quorum is present.

(e) ~~(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation for attendance at state council meetings but shall, with approval from the state ombudsman, be reimbursed for per diem and travel expenses as provided in s. 112.061.

Section 6. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment ~~membership~~.—

(1)(a) The state ombudsman shall designate districts and each district shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each district ~~local council~~ shall function under the direction of the state ombudsman.

(b) The state ombudsman shall ensure that there is at least one employee of the department certified as a long-term care

ombudsman and a least one local council operating in each district ~~of the department's planning and service areas~~. The state ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. ~~The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.~~

(c) Each district shall convene a public meeting at least quarterly.

(2) The duties of the representatives of the State Long-Term Care Ombudsman Program ~~local councils~~ are to:

(a) Provide services to assist in ~~Serve as a third-party mechanism for~~ protecting the health, safety, welfare, and ~~civil and human~~ rights of residents.

(b) Discover, investigate, and determine the existence of abuse, ~~or~~ neglect, or exploitation in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable.

(c) Identify ~~Elicit, receive~~, investigate, ~~respond to~~, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.

(d) Review and, if necessary, comment on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the ~~rights~~, health, safety,

welfare, and rights ~~welfare~~ of residents.

(e) Review personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint ~~or problem~~.

(f) Recommend that the state ombudsman and the legal advocate seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of ~~the~~ residents.

(g) Provide technical assistance for the development of resident and family councils within long-term care facilities.

(h) ~~(g)~~ Carry out other activities that the state ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), a representative of the State Long-Term Care Ombudsman Program or a member of a local council is authorized to enter any long-term care facility without notice or first obtaining a warrant; however, ~~subject to the provisions of~~ s. 400.0074(2) may apply regarding notice of a followup administrative assessment.

(4) Each district and local council shall be composed of ombudsmen ~~members~~ whose primary residences are ~~residence is~~ located within the boundaries of the district ~~local council's jurisdiction~~.

(a) Upon good cause shown and with the consent of the ombudsman, the state ombudsman may appoint an ombudsman to another district. The ombudsman shall strive to ensure that each local council include the following persons as members:

1. At least one medical or osteopathic physician whose

practice includes or has included a substantial number of geriatric patients and who may practice in a long-term care facility;

2. At least one registered nurse who has geriatric experience;

3. At least one licensed pharmacist;

4. At least one registered dietitian;

5. At least six nursing home residents or representative consumer advocates for nursing home residents;

6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;

7. At least one attorney; and

8. At least one professional social worker.

(b) The following individuals may not be appointed as ombudsmen:

1. The owner or representative of a long-term care facility.

2. A provider or representative of a provider of long-term care service.

3. An employee of the agency.

4. An employee of the department, except for staff certified as ombudsmen in the district offices.

5. An employee of the Department of Children and Families.

6. An employee of the Agency for Persons with Disabilities.

~~(b) In no case shall the medical director of a long-term care facility or an employee of the agency, the department, the Department of Children and Families, or the Agency for Persons with Disabilities serve as a member or as an ex officio member~~

~~of a council.~~

(5)(a) To be appointed as an ombudsman, an individual must:

1. ~~Individuals wishing to join a local council shall~~ Submit an application to the state ombudsman or his or her designee. ~~The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.~~

2. Successfully complete a level 2 background screening pursuant to s. 430.0402 and chapter 435.

(b) The state ombudsman shall approve or deny the appointment of the individual as an ombudsman ~~secretary may rescind the ombudsman's approval of a member on a local council at any time~~. If the state ombudsman ~~secretary~~ rescinds the approval of a member on a local council, the state ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the state ombudsman ~~secretary~~ provides his or her approval.

(c) Upon appointment as an ombudsman, the individual may participate in district activities but may not represent the program or conduct any authorized program duties until the individual has completed the initial training specified in s. 400.0091(1) and has been certified by the state ombudsman.

(d) The state ombudsman may rescind the appointment of an individual as an ombudsman for good cause shown, such as

development of a conflict of interest, failure to adhere to the policies and procedures established by the State Long Term Care Program, or demonstrative inability to carry out the responsibilities of the State Long Term Care Program. After the appointment is rescinded, the individual may not conduct any duties as an ombudsman and may not represent the State Long-Term Care Ombudsman Program.

(e) ~~(c)~~ A local council may recommend the removal of one or more of its members by submitting to the state ombudsman a resolution adopted by a two-thirds vote of the members of the council stating the name of the member or members recommended for removal and the reasons for the recommendation. If such a recommendation is adopted by a local council, the local council chair or district manager ~~coordinator~~ shall immediately report the council's recommendation to the state ombudsman. The state ombudsman shall review the recommendation of the local council and advise the district manager and local council chair ~~secretary~~ of his or her decision ~~recommendation~~ regarding removal of the council member or members.

(6)(a) Each local council shall elect a chair for a term of 1 year. There shall be no limitation on the number of terms that an approved member of a local council may serve as chair.

(b) The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(c) The chair may create additional executive positions as necessary to carry out the duties of the local council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the

same day as the term of the chair.

(d) A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of the members of the local council. If any chair is removed from office before ~~prior to~~ the expiration of his or her term, a replacement chair shall be elected during the same meeting, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term of the person he or she replaced.

(7) Each local council shall meet upon the call of its chair or upon the call of the ombudsman. Each local council shall meet at least once a month but may meet more frequently if necessary.

(8) An ombudsman may not ~~A member of a local council shall~~ receive ~~no~~ compensation but shall, with approval from the state ombudsman, be reimbursed for travel expenses ~~both within and outside the jurisdiction of the local council~~ in accordance with the provisions of s. 112.061.

(9) A representative of the State Long-Term Care Ombudsman Program may ~~The local councils are authorized to~~ call upon appropriate state agencies ~~of state government~~ for ~~such~~ professional assistance as ~~may be~~ needed in the discharge of his or her ~~their~~ duties, and such~~. All~~ state agencies shall cooperate ~~with the local councils~~ in providing requested information and agency representation ~~at council meetings~~.

Section 7. Section 400.0070, Florida Statutes, is amended to read:

400.0070 Conflicts of interest.—

(1) A representative of the State Long-Term Care Ombudsman

Program may ~~The ombudsman shall~~ not:

(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

(2) Each representative of the State Long-Term Care Ombudsman Program ~~employee of the office, each state council member, and each local council member~~ shall certify that he or she does not have a ~~has no~~ conflict of interest.

(3) The department, in consultation with the state ombudsman, shall define by rule:

(a) Situations that constitute a ~~person having a~~ conflict of interest which ~~that~~ could materially affect the objectivity or capacity of an individual ~~a person~~ to serve as a representative of the State Long-Term Care Ombudsman Program while carrying out the purposes of the State Long-Term Care Program as specified in this part ~~on an ombudsman council, or as an employee of the office, while carrying out the purposes of the State Long-Term Care Ombudsman Program as specified in this part~~.

(b) The procedure by which an individual ~~a person~~ listed in subsection (2) must ~~shall~~ certify that he or she does not have a ~~has no~~ conflict of interest.

Section 8. Section 400.0071, Florida Statutes, is amended to read:

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—The department, in consultation with the state ombudsman, shall adopt rules implementing state and local complaint procedures. The rules must include procedures for receiving, investigating, identifying, and resolving complaints concerning the health, safety, welfare, and rights of residents.~~:~~

~~(1) Receiving complaints against a long-term care facility or an employee of a long-term care facility.~~

~~(2) Conducting investigations of a long-term care facility or an employee of a long-term care facility subsequent to receiving a complaint.~~

~~(3) Conducting onsite administrative assessments of long-term care facilities.~~

Section 9. Section 400.0073, Florida Statutes, is amended to read:

400.0073 State and local ombudsman council investigations.—

(1) A representative of the State Long-Term Care Ombudsman Program ~~local council~~ shall identify and investigate, within a reasonable time after a complaint is made, by or on behalf ~~any complaint~~ of a resident relating to actions or omissions by providers or representatives of providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.~~, a representative of a resident, or any other credible source based on an action or omission by an administrator, an employee, or a representative of a long-term~~

~~care facility which might be:~~

~~(a) Contrary to law;~~

~~(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;~~

~~(c) Based on a mistake of fact;~~

~~(d) Based on improper or irrelevant grounds;~~

~~(e) Unaccompanied by an adequate statement of reasons;~~

~~(f) Performed in an inefficient manner; or~~

~~(g) Otherwise adversely affecting the health, safety, welfare, or rights of a resident.~~

~~(2) In an investigation, both the state and local councils have the authority to hold public hearings.~~

(2) ~~(3)~~ Subsequent to an appeal from a local council, the state council may investigate any complaint received by the local council involving a long-term care facility or a resident.

(3) ~~(4)~~ If a representative of the State Long-Term Care Ombudsman Program ~~the ombudsman or any state or local council member~~ is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or the local council~~ in the performance of official duties as described in s. 400.0083(1) and to have violated ~~committed a violation of~~ this part. The representative of the State Long-Term Care Ombudsman Program ~~ombudsman~~ shall report a facility's refusal to allow entry to the state ombudsman or his or her designee, who shall report the incident to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s.

429.19, s. 429.69, or s. 429.71.

Section 10. Section 400.0074, Florida Statutes, is amended to read:

400.0074 Local ombudsman council onsite administrative assessments.—

(1) A representative of the State Long-Term Care Ombudsman Program shall ~~In addition to any specific investigation conducted pursuant to a complaint, the local council shall~~ conduct, at least annually, an onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home ~~within its jurisdiction~~. This administrative assessment must be resident-centered and must ~~shall~~ focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.

(2) An onsite administrative assessment conducted by a local council shall be subject to the following conditions:

(a) To the extent possible and reasonable, the administrative assessment may ~~assessments shall~~ not duplicate the efforts of ~~the agency~~ surveys and inspections of long-term care facilities conducted by state agencies ~~under part II of this chapter and parts I and II of chapter 429~~.

(b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to complete the assessment ~~carry out the duties of the local council~~.

(c) Advance notice of an administrative assessment may not be provided to a long-term care facility, except that notice of

followup assessments on specific problems may be provided.

(d) A representative of the State Long-Term Care Ombudsman Program ~~local council member physically~~ present for the administrative assessment must ~~shall~~ identify himself or herself to the administrator ~~and cite the specific statutory authority for his or her assessment~~ of the facility or his or her designee.

(e) An administrative assessment may not unreasonably interfere with the programs and activities of residents.

(f) A representative of the State Long-Term Care Ombudsman Program ~~local council member~~ may not enter a single-family residential unit within a long-term care facility during an administrative assessment without the permission of the resident or the representative of the resident.

(g) An administrative assessment must be conducted in a manner that does not impose an ~~will impose no~~ unreasonable burden on a long-term care facility.

(3) Regardless of jurisdiction, the state ombudsman may authorize a state or local council member to assist another local council to perform the administrative assessments described in this section.

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if a representative of the State Long-Term Care Ombudsman Program ~~the ombudsman or a state or local council member~~ is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or the local council~~ in the performance of official duties as

described in s. 400.0083(1) and to have committed a violation of this part. The representative of the State Long-Term Care Ombudsman Program ~~ombudsman~~ shall report the refusal by a facility to allow entry to the state ombudsman or his or her designee, who shall report the incident to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

(5) The department, in consultation with the state ombudsman, may adopt rules implementing procedures for conducting onsite administrative assessments of long-term care facilities.

Section 11. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint ~~or problem~~ verified by a representative of the State Long-Term Care Ombudsman Program ~~an ombudsman council~~ as a result of an investigation which is determined by the local council to require remedial action may ~~or onsite administrative assessment, which complaint or problem is determined to require remedial action by the local council, shall~~ be identified and brought to the attention of the long-term care facility administrator subject to the confidentiality provisions of s. 400.0077 ~~in writing~~. Upon receipt of the information ~~such document~~, the administrator, with the concurrence of the representative of the State Long-Term Care Ombudsman Program ~~local council chair~~, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the

representative of the State Long-Term Care Ombudsman Program may extend the target date if there is reason to believe such action would facilitate the resolution of the complaint, or the representative of the State Long-Term Care Ombudsman Program may refer the complaint to the district manager who may refer the complaint to the state council. ~~local council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:~~

~~1. Extend the target date if the chair has reason to believe such action would facilitate the resolution of the complaint.~~

~~2. In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.~~

~~3. Refer the complaint to the state council.~~

(b) If the representative of the State Long-Term Care Ombudsman Program determines ~~local council chair believes~~ that the health, safety, welfare, or rights of a ~~the~~ resident are in imminent danger, the representative of the State Long-Term Care Ombudsman Program must immediately ~~the chair shall~~ notify the district manager and local council chair. ~~ombudsman or legal advocate, who,~~ The district manager or local council chair, after verifying that such imminent danger exists, must notify the appropriate state agencies, including law enforcement agencies, the state ombudsman, and the legal advocate to ensure the protection of ~~shall seek immediate legal or administrative remedies to protect~~ the resident.

(c) If the state ombudsman or legal advocate has reason to believe that the long-term care facility or an employee of the

facility has committed a criminal act, the state ombudsman or legal advocate shall provide the local law enforcement agency with the relevant information to initiate an investigation of the case.

(2) ~~(a)~~ Upon referral from a district or local council, the state ombudsman or his or her designee ~~council~~ shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action to resolve or remedy the ~~on a~~ complaint ~~by the state council~~, the state ombudsman ~~council~~ may, ~~after obtaining approval from the ombudsman and a majority of the state council members~~:

(a) ~~1.~~ In accordance with s. 400.0077, publicize the complaint, the recommendations of the local or state council, and the response of the long-term care facility.

(b) ~~2.~~ Recommend to the department and the agency a series of facility reviews pursuant to s. 400.19, s. 429.34, or s. 429.67 to ensure correction and nonrecurrence of the conditions that gave ~~give~~ rise to the complaint ~~complaints~~ against the ~~a~~ long-term care facility.

(c) ~~3.~~ Recommend to the department and the agency that the long-term care facility no longer receive payments under any state assistance program, including Medicaid.

(d) ~~4.~~ Recommend to the department and the agency that procedures be initiated for action against ~~revocation of~~ the long-term care facility's license in accordance with chapter 120.

~~(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate,~~

~~who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the resident.~~

(3) ~~(c)~~ If the state ombudsman, after consultation with the legal advocate, has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the state ombudsman shall provide the local law enforcement agency with the relevant information to initiate an investigation of the case.

Section 12. Section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(1) The office shall establish a statewide toll-free telephone number and e-mail address for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents.

(2) ~~Every resident or representative of a resident shall receive,~~ Upon admission to a long-term care facility, each resident or representative of a resident must receive information regarding:

(a) The purpose of the State Long-Term Care Ombudsman Program~~,~~;

(b) The statewide toll-free telephone number and e-mail address for receiving complaints;~~, and~~

(c) Information that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident rights.

(d) Other relevant information regarding how to contact

representatives of the State Long Term Care Ombudsman Program ~~the program~~.

Residents or their representatives must be furnished additional copies of this information upon request.

Section 13. Section 400.0079, Florida Statutes, is amended to read:

400.0079 Immunity.—

(1) Any person making a complaint pursuant to this part who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed as a direct or indirect result of making the complaint.

(2) Representatives of the State Long-Term Care Ombudsman Program are ~~The ombudsman or any person authorized by the ombudsman to act on behalf of the office, as well as all members of the state and local councils, shall be~~ immune from any liability, civil or criminal, that otherwise might be incurred or imposed during the good faith performance of official duties.

Section 14. Section 400.0081, Florida Statutes, is amended to read:

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide representatives of the State Long-Term Care Program with ~~the office, the state council and its members, and the local councils and their members~~ access to:

(a) ~~Any portion of~~ The long-term care facility and its residents ~~any resident as necessary to investigate or resolve a complaint~~.

(b) Where appropriate, medical and social records of a

resident for review ~~as necessary to investigate or resolve a complaint,~~ if:

1. The representative of the State Long-Term Care Ombudsman Program ~~office~~ has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and does not have a ~~has no~~ legal representative.

(c) Medical and social records of a ~~the~~ resident as necessary to investigate ~~or resolve~~ a complaint, if:

1. A legal representative or guardian of the resident refuses to give permission;

2. The representative of the State Long-Term Care Ombudsman Program ~~office~~ has reasonable cause to believe that the legal representative or guardian is not acting in the best interests of the resident; and

3. The representative of the State Long-Term Care Ombudsman Program ~~state or local council member~~ obtains the approval of the state ombudsman.

(d) Access to ~~The~~ administrative records, policies, and documents to which residents or the general public have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) The department, in consultation with the state ombudsman ~~and the state council,~~ may adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.

Section 15. Section 400.0083, Florida Statutes, is amended to read:

400.0083 Interference; retaliation; penalties.—

(1) A ~~It shall be unlawful for any~~ person, long-term care facility, or other entity may not ~~to~~ willfully interfere with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or a local council~~ in the performance of official duties.

(2) A ~~It shall be unlawful for any~~ person, long-term care facility, or other entity may not ~~to~~ knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the State Long Term-Care Ombudsman Program ~~office, the state council, or a local council~~.

(3) A ~~Any~~ person, long-term care facility, or other entity that violates this section:

(a) Is ~~Shall be~~ liable for damages and equitable relief as determined by law.

(b) Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 16. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Department oversight; funding.—

(1) The department shall meet the costs associated with the State Long-Term Care Ombudsman Program from funds appropriated to it.

(a) The department shall include the costs associated with support of the State Long-Term Care Ombudsman Program when developing its budget requests for consideration by the Governor and submittal to the Legislature.

(b) The department may divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio to cover the costs associated with administering the State Long-Term Care Ombudsman Program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

(2) The department shall monitor the State Long-Term Care Ombudsman Program ~~office~~, the state council, and the local councils to ensure that each is carrying out the duties delegated to it by state and federal law.

(3) The department is responsible for ensuring that the State Long-Term Care Ombudsman Program ~~office~~:

(a) Has the objectivity and independence required to qualify it for funding under the federal Older Americans Act.

(b) Provides information to public and private agencies, legislators, and others.

(c) Provides appropriate training to representatives of the State Long-Term Care Ombudsman Office ~~or of the state or local councils~~.

(d) Coordinates ombudsman services with Disability Rights Florida, the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(4) The department shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman has formulated in accordance with the Older Americans Act.

(b) Whenever necessary, act as liaison between agencies and branches of the federal and state governments and the State

Long-Term Care Ombudsman Program.

Section 17. Section 400.0089, Florida Statutes, is amended to read:

400.0089 Complaint data reports.—The State Long-Term Care Ombudsman Program ~~office~~ shall maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving complaints ~~significant problems~~. ~~The office shall publish quarterly and make readily available~~ Information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program shall be published quarterly and made readily available and shall include such information in the annual report required under s. 400.0065.

Section 18. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.—The state ombudsman shall ensure that appropriate training is provided to all representatives of the State Long-Term Care Ombudsman Program ~~employees of the office and to the members of the state and local councils~~.

(1) All representatives of the State Long-Term Care Ombudsman Program ~~state and local council members and employees of the office~~ shall be given a minimum of 20 hours of training upon employment with the State Long-Term Care Ombudsman Program ~~office~~ or appointment as an ombudsman. Ten ~~approval as a state or local council member and 10~~ hours of training in the form of continuing education is required annually thereafter.

(2) The state ombudsman shall approve the curriculum for the initial and continuing education training, which must, at a

minimum, address:

(a) Resident confidentiality.

(b) Guardianships and powers of attorney.

(c) Medication administration.

(d) Care and medication of residents with dementia and Alzheimer's disease.

(e) Accounting for residents' funds.

(f) Discharge rights and responsibilities.

(g) Cultural sensitivity.

(h) Any other topic related to residency in a long-term care facility ~~recommended by the secretary~~.

(3) An individual ~~No employee, officer, or representative of the office or of the state or local councils,~~ other than the state ombudsman, may not hold himself or herself out as a representative of the State Long-Term Care Ombudsman Program or conduct any authorized program duty described in this part unless the individual ~~person~~ has received the training required by this section and has been certified by the state ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local councils.

Section 19. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(4) The department shall administer the State Long-Term Care Ombudsman Program ~~Council~~, created by s. 400.0063 ~~400.0067~~, ~~and the local long-term care ombudsman councils, created by s. 400.0069~~ and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that ~~both~~ the State Long Term Care

Ombudsman Program operates ~~state and local long-term care ombudsman councils operate~~ in compliance with the Older Americans Act.

Section 20. Subsections (14) through (19) of section 400.021, Florida Statutes, are amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(14) "Office" has the same meaning as in s. 400.0060.

(15)~~(14)~~ "Planning and service area" means the geographic area in which the Older Americans Act programs are administered and services are delivered by the Department of Elderly Affairs.

(16) "Representative of the State Long Term Care Ombudsman Program" has the same meaning as in s. 400.0060.

(17)~~(15)~~ "Respite care" means admission to a nursing home for the purpose of providing a short period of rest or relief or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.

(18)~~(16)~~ "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals.

(19)~~(17)~~ "Resident designee" means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose.

(20)~~(18)~~ "State Long Term Care Ombudsman Program ~~ombudsman council~~" has the same meaning as in s. 400.0060 ~~means the State Long-Term Care Ombudsman Council established pursuant to s. 400.0067~~.

(21)~~(19)~~ "Therapeutic spa services" means bathing, nail, and hair care services and other similar services related to personal hygiene.

Section 21. Paragraph (c) of subsection (1) and subsections (2), and (3) of section 400.022, Florida Statutes, are amended to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government,

including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long Term Care Ombudsman Program ~~members of the state or local ombudsman council~~; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Program ~~Council~~ to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or state or local ombudsman council. The statement must be in boldfaced type and ~~shall~~ include the ~~name, address, and~~ telephone number and e-mail address of the State Long Term Care Ombudsman Program, the numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of

Children and Families ~~central abuse hotline where complaints may be lodged~~.

(3) Any violation of the resident's rights set forth in this section constitutes ~~shall constitute~~ grounds for action by the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility must ~~shall~~ include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards~~,~~ and consultation with the State Long-Term Care Ombudsman Program ~~ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located~~.

Section 22. Subsections (8), (9), and (11) through (14) of section 400.0255, Florida Statutes, are amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to


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any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form must ~~shall~~ state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must ~~shall~~ clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council ~~to~~ review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(9) A resident may request that the State Long-Term Care Ombudsman Program or local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator's designee, must forward the request for review contained in the notice to the State Long-Term Care Ombudsman Program or local ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant


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to state or federal law during the ~~period of~~ time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the State Long-Term Care Ombudsman Program or the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. The State Long-Term Care Ombudsman Program or a ~~A~~ local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the State Long-Term Care Ombudsman Program or local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with ~~the requirements of~~ this section. If requested, the State Long-Term Care Ombudsman Program or the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

(a) The resident, or the resident's legal representative or

designee.

(b) The facility administrator, or the facility's legal representative or designee.

A representative of the State Long-Term Care Ombudsman Program or the local long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1):

(a) Names and addresses.

(b) Medical services provided.

(c) Social and economic conditions or circumstances.

(d) Evaluation of personal information.

(e) Medical data, including diagnosis and past history of disease or disability.

(f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by the State Long-Term Care Ombudsman Program or a local long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

Section 23. Paragraph (d) of subsection (5) of section

400.162, Florida Statutes, is amended to read:

400.162 Property and personal affairs of residents.—

(5)

(d) If, at any time during the period for which a license is issued, a licensee that has not purchased a surety bond or entered into a self-insurance agreement, as provided in paragraphs (b) and (c), is requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the agency of the request and make application for a surety bond or for participation in a self-insurance agreement within 7 days after ~~of~~ the request, exclusive of weekends and holidays. Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained by the licensee for review by the agency and the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Program ~~Council~~.

Section 24. Subsections (1) and (4) of section 400.19, Florida Statutes, are amended to read:

400.19 Right of entry and inspection.—

(1) In accordance with part II of chapter 408, the agency and any of its ~~duly~~ designated officers ~~officer~~ or employees ~~employee thereof~~ or a representative of ~~member of~~ the State Long-Term Care Ombudsman Program ~~Council~~ or the local long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 which ~~that~~ provides extended care or other long-term care services, at any reasonable time in order to determine the

state of compliance with ~~the provisions of~~ this part, part II of chapter 408, and applicable rules in force pursuant thereto. The agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

(4) The agency shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a representative of the State Long-Term Care Ombudsman Program or long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

Section 25. Subsection (6) and paragraph (c) of subsection (7) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(6) Before ~~Prior to~~ conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care

ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the State Long-Term Care Ombudsman Program or local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. In addition to license categories authorized under part II of chapter 408, the agency shall assign a licensure status of standard or conditional to each nursing home.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, representatives of the State Long-Term Care Ombudsman Program ~~ombudsman council members in the planning and service area in which the facility is located~~, guardians of residents, and staff of the nursing home facility.

Section 26. Paragraph (a) of subsection (3), paragraph (f) of subsection (5), and subsection (6) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(3)(a) The Gold Seal Program shall be developed and implemented by the Governor's Panel on Excellence in Long-Term Care which shall operate under the authority of the Executive Office of the Governor. The panel shall be composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; a representative of the State Long-Term Care Ombudsman Program; one person appointed by the Florida Life Care Residents Association; one person appointed by the State Surgeon General; two persons appointed by the Secretary of Health Care Administration; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies on the panel shall be filled in the same manner as the original appointments.

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(f) Evidence that verified ~~an outstanding record regarding the number and types of substantiated~~ complaints reported to the State Long-Term Care Ombudsman Program ~~Council~~ within the 30 months preceding application for the program.

A facility assigned a conditional licensure status may not

qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

(6) The agency, nursing facility industry organizations, consumers, State Long-Term Care Ombudsman Program ~~Council~~, and members of the community may recommend to the Governor facilities that meet the established criteria for consideration for and award of the Gold Seal. The panel shall review nominees and make a recommendation to the Governor for final approval and award. The decision of the Governor is final and is not subject to appeal.

Section 27. Subsections (18) through (28) of section 415.102, Florida Statutes, are redesignated as subsections (19) through and (29), respectively, and a new subsection (18) is added to that section, to read:

415.102 Definitions of terms used in ss. 415.101-415.113.— As used in ss. 415.101-415.113, the term:

(18) "Office" has the same meaning as in s. 400.0060.

Section 28. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. ~~An~~ Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council member~~; or

8. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 29. Subsection (1) of section 415.104, Florida Statutes, is amended to read:

415.104 Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.—

(1) The department shall, upon receipt of a report alleging

abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~ may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

Section 30. Subsection (8) of section 415.1055, Florida Statutes, is amended to read:

415.1055 Notification to administrative entities.—

(8) At the conclusion of a protective investigation at a

facility, the department shall notify either the Florida local advocacy council or the State Long-Term Care Ombudsman Program or the long-term care ombudsman council of the results of the investigation. This notification must be in writing.

Section 31. Subsection (2) of section 415.106, Florida Statutes, is amended to read:

415.106 Cooperation by the department and criminal justice and other agencies.—

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Program ~~Council~~, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

Section 32. Paragraph (g) of subsection (3) of section 415.107, Florida Statutes, is amended to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(g) Any appropriate official of the Florida advocacy council, State Long-Term Care Ombudsman Program or long-term

care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

Section 33. Present subsections (16) through (26) of section 429.02, Florida Statutes, are redesignated as subsections (17) through (27), respectively, present subsections (11) and (20) are amended, and a new subsection (16) is added to that section to read:

429.02 Definitions.—When used in this part, the term:

(11) "Extended congregate care" means acts beyond those authorized in subsection (17) ~~(16)~~ that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(16) "Office" has the same meaning as in s. 400.0060.

(17)~~(16)~~ "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

(18)~~(17)~~ "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device

which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

(19)~~(18)~~ "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

(20)~~(19)~~ "Resident" means a person 18 years of age or older, residing in and receiving care from a facility.

(21)~~(20)~~ "Resident's representative or designee" means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to s. 429.24; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the State Long-Term Care Ombudsman Program or local ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 429.29.

(22)~~(21)~~ "Service plan" means a written plan, developed and agreed upon by the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, if any, and the administrator or

designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

(23)~~(22)~~ "Shared responsibility" means exploring the options available to a resident within a facility and the risks involved with each option when making decisions pertaining to the resident's abilities, preferences, and service needs, thereby enabling the resident and, if applicable, the resident's representative or designee, or the resident's surrogate, guardian, or attorney in fact, and the facility to develop a service plan which best meets the resident's needs and seeks to improve the resident's quality of life.

(24)~~(23)~~ "Supervision" means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.

(25)~~(24)~~ "Supplemental security income," Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(26)~~(25)~~ "Supportive services" means services designed to encourage and assist aged persons or adults with disabilities to remain in the least restrictive living environment and to maintain their independence as long as possible.

(27)~~(26)~~ "Twenty-four-hour nursing supervision" means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services shall be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or stage.

Section 34. Subsection (9) of section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(9) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Families, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, ~~and~~ the State Long-Term Care Ombudsman Program and state and local ombudsman councils. The Department of Children and Families shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage

to other interested parties requesting a copy of this list. This information may be provided electronically or through the agency's Internet site.

Section 35. Subsection (8) of section 429.26, Florida Statutes, is amended to read:

429.26 Appropriateness of placements; examinations of residents.—

(8) The Department of Children and Families may require an examination for supplemental security income and optional state supplementation recipients residing in facilities at any time and shall provide the examination whenever a resident's condition requires it. Any facility administrator; personnel of the agency, the department, or the Department of Children and Families; or a representative of the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council member~~ who believes a resident needs to be evaluated shall notify the resident's case manager, who shall take appropriate action. A report of the examination findings shall be provided to the resident's case manager and the facility administrator to help the administrator meet his or her responsibilities under subsection (1).

Section 36. Subsection (2) and paragraph (b) of subsection (3) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice must ~~shall~~ include the statewide toll-free telephone

number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone number of ~~name, address, and telephone numbers~~ of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families ~~central abuse hotline~~ and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the State Long Term Care Ombudsman Program or local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families ~~central abuse hotline~~, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

(3)

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the district ~~planning and service area~~ in which the facility is located to discuss residents' experiences within the facility.

Section 37. Section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, a ~~any~~ duly designated officer or employee of the department, the Department of Children and Families, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a representative of the State Long-Term Care Ombudsman Program or a member of the state or local long-term care ombudsman council may ~~shall have the right to~~ enter unannounced upon and into the

premises of any facility licensed under ~~pursuant to~~ this part in order to determine the state of compliance with ~~the provisions of~~ this part, part II of chapter 408, and applicable rules. Data collected by the State Long-Term Care Ombudsman Program, ~~state or~~ local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

Section 38. Subsection (2) of section 429.35, Florida Statutes, is amended to read:

429.35 Maintenance of records; reports.—

(2) Within 60 days after the date of the biennial inspection visit required under s. 408.811 or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in in the district ~~whose planning and service area, as defined in part II of chapter 400,~~ where the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.

Section 39. Subsection (6) of section 429.67, Florida Statutes, is amended to read:

429.67 Licensure.—

(6) In addition to the requirements of s. 408.811, access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, the Department of Children and Families, the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire, health,

sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a licensed adult family-care home must be provided at reasonable times to representatives of the State Long Term Care Ombudsman Program ~~for the local long-term care ombudsman council~~.

Section 40. Subsection (2) of section 429.85, Florida Statutes, is amended to read:

429.85 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part. Residents must also be given the statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program, the telephone number ~~names, addresses, and telephone numbers~~ of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families ~~the central abuse hotline~~ where they may lodge complaints.

Section 41. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 7018
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Children, Families, and Elder Affairs Committee
SUBJECT:	State Ombudsman Program
DATE:	April 10, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Crosier	Hendon		**CF Submitted as Committee Bill**
1.	Brown	Pigott	AHS	**Recommend: Fav/CS**
2.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7018 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act. The bill revises the appointment process for three at-large positions to the State Long-Term Care Council whereby the appointments are no longer made by the Governor but by the Secretary of the DOEA.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Older Americans Act

The federal Older Americans Act (OAA) was enacted in 1965 to assist elders to lead independent, meaningful, and dignified lives in their own communities rather than in more costly residential or nursing home settings. OAA programs are administered through area agencies on aging under the Florida Department of Elder Affairs (DOEA). To be eligible for OAA programs, individuals must be 60 years of age or older. Spouses and disabled adults younger than 60 years

of age may receive services in certain circumstances. Preference is given to elders with the greatest economic or social needs, particularly low-income minority individuals; however, no means testing is allowed. The OAA was most recently reauthorized in 2006 to supply funding for several nutritional programs and in-home and supportive services for elders.

Long-Term Care Ombudsman Program

Florida's Long-Term Care Ombudsman Program (LTCOP) was created in 1975 as a result of the OAA. The OAA grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities, and adult family care homes.

In Florida, a long-term care ombudsman is a volunteer who helps improve the lives of persons who live in long-term care settings by investigating and resolving their complaints against the facility. The LTCOP includes more than 300 volunteers who advocate for persons who reside in long-term care settings.

The LTCOP is administratively housed within the DOEA. The LTCOP seeks to discover, investigate, and determine the presence of conditions which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. The LTCOP accomplishes these tasks by conducting investigations of complaints filed by or on behalf of residents and by conducting annual administrative assessments of such facilities. An administrative assessment is a resident-centered, unannounced review of conditions in a facility which have an impact on the rights, health, safety, and welfare of residents with the purpose of noting needed improvements and making recommendations to enhance the quality of life for residents.

The LTCOP has no enforcement or regulatory oversight authority for long-term care facilities. The Agency for Health Care Administration (AHCA) has the responsibility for licensing long-term care facilities. Ombudsmen, after completing specified statutory requirements, are certified as independent advocates, working solely on behalf of residents to mediate disputes between residents and long-term care facilities on an informal basis. The LTCOP provides residents with the opportunity to develop personal and confidential relationships with the ombudsmen to create an environment that allows a resident to candidly voice complaints. If a complaint is verified by an ombudsman indicating facility conditions that could violate the facility's licensure or be viewed as criminal activity, the LTCOP refers the issue to the AHCA, Adult Protective Services within the Department of Children and Families (DCF), the Attorney General's Office, or other agencies as appropriate.[1]

In August 2011, the U.S. Department of Health and Human Services' Administration on Aging issued its Compliance Review of the State of Florida Long-Term Ombudsman Program[2] The review identified the State of Florida's policies and practices regarding the designation of local ombudsmen, legislative advocacy, and information dissemination as out of compliance with the OAA. Statutory changes are necessary to bring state law into conformity with federal law.

[1] Department of Elder Affairs, *Senate Bill 508 Fiscal Analysis* (Dec. 31, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[2] Administration on Aging, Department of Health and Human Services, *Compliance Review of the State of Florida Long-Term Care Ombudsman Program* (August 30, 2011)(on file with the Senate Committee on Children, Families, and Elder Affairs).

III. Effect of Proposed Changes:

Section 1 amends s. 400.0060, F.S., to revise and create definitions of terms used in the ombudsman statute. Definitions for "long-term care facility," and "ombudsman" are updated. The term "representative of the State Long Term Care Ombudsman Program" is defined to include the state ombudsman, employees, and certified ombudsmen. The term "state ombudsman" is defined as the person appointed by the secretary of DOEA to administer the ombudsman program. The term "resident" is revised to include persons over 18 years of age who reside in a long-term care facility. The term "district" refers to geographical areas in the state designated by the state ombudsman. The bill specifies that each district may have more than one local unit of ombudsmen.

Section 2 amends s. 400.0061, F.S., which provides legislative findings and intent, to conform existing text to newly-defined terms.

Section 3 amends s. 400.0063, F.S., which establishes the office of state ombudsman, to conform existing text to newly-defined terms.

Section 4 amends s. 400.0065, F.S., relating to duties of the Long-Term Care Ombudsman Program, to give the state long-term care ombudsman the final authority to make and rescind appointments of individuals serving as ombudsmen; to update the list of individuals to whom the state ombudsman must submit the annual ombudsman program report; and to revise terminology to conform to new definitions.

Section 5 amends s. 400.0067, F.S., relating to the State Long-Term Care Ombudsman Council, to update terminology. Currently, appointments to the three at-large positions on the council are made by the Governor. Under the bill, each local council in a district must select an ombudsman to serve as a representative to the state council. The state ombudsman will submit the names to the Secretary of the DOEA, who will make the appointments to the three at-large positions on the state council.

Section 6 amends 400.0069, F.S., relating to districts and local ombudsman councils. The state ombudsman will designate districts and each district will designate a local council. The bill provides for development of family councils within facilities; clarifies that ombudsmen, upon good cause shown and with their approval, may serve in a different district; and clarifies the application, background screening, and training requirements needed to become a certified ombudsman. The bill also requires each district to convene a public meeting at least quarterly. The bill provides that ombudsmen identify, investigate, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of a resident.

Section 7 amends s. 400.0070, F.S., relating to ombudsman conflicts of interest, to conform to newly-defined terms.

Section 8 amends s. 400.0071, F.S., relating to investigations and resolution of complaints concerning the health, safety, welfare and rights of residents. The bill removes references to the administrative assessment process from the complaint process.

Section 9 amends s. 400.0073, F.S., relating to complaint investigations, access to long-term care facilities by ombudsmen, reporting procedures in the event access is denied to the facility or a resident, and conforms to newly-defined terms.

Section 10 amends s. 400.0074, F.S., to provide an on-site administrative assessment at least annually which must be resident-centered and must focus on the rights, health, safety, and welfare of the residents. The assessment must not impose an unreasonable burden on the long-term care facility. The bill moves the rulemaking authority from s. 400.072, F.S., and conforms to newly-defined terms.

Section 11 amends s. 400.0075, F.S., relating to complaint resolutions and the notification process in the event of imminent danger to the health, safety, welfare or rights of a resident, to conform to newly-defined terms and to clarify complaint reporting procedures.

Section 12 revises s. 400.0078, F.S., relating to access to the ombudsmen, to add email as a way to make complaints. The bill also requires long-term care facilities to notify all residents and their families upon being admitted to the facility that retaliation against residents making complaints to the ombudsman is prohibited by law.

Section 13 amends s. 400.0079, F.S., relating to immunity for persons making complaints, to conform to newly-defined terms.

Section 14 amends s. 400.0081, F.S., relating to ombudsman access to long-term care facilities, including access to medical and social records of a resident as necessary to resolve a complaint. This bill also provides conformity to newly-defined terms and deletes the limitation that ombudsmen have access to residents only for investigating a complaint.

Section 15 amends s. 400.0083, F.S., relating to interference with the ombudsman, to make technical and conforming changes.

Section 16 amends s. 400.0087, F.S., relating to oversight of the ombudsman program by the DOEA, to make technical and conforming changes.

Section 17 amends 400.0089, F.S., relating to information on ombudsman complaints, to make technical and conforming changes.

Section 18 amends s. 400.0091, F.S., relating to ombudsman training, to clarify training requirements and to make conforming changes.

Sections 19 through 40 amend ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 145.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, F.S., to conform to newly-defined terms and to make technical changes.

Section 41 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.41, 400.0060, 400.0061, 400.0063, 400.0065, 400.0067, 400.0069, 400.0070, 400.0071, 400.0073, 400.0074, 400.0075, 400.0078, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.191, 400.23, 400.235, 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85.

IX. Additional Information:

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

CS by Appropriations on April 9, 2015:
The committee substitute requires local councils in districts designated by the state ombudsman to convene public meetings at least quarterly, instead of every quarter or as needed.

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 Children, Families, and Elder Affairs

586-01501A-15 20157018__

A bill to be entitled

An act relating to the state ombudsman program; amending s. 400.0060, F.S.; revising and defining terms; amending s. 400.0061, F.S.; revising legislative intent with respect to citizen ombudsmen; deleting references to ombudsman councils and transferring their responsibilities to representatives of the Office of State Long-Term Care Ombudsman; amending s. 400.0063, F.S.; revising duties of the office; amending s. 400.0065, F.S.; revising the purpose of the office; revising the duties and authority of the state ombudsman; requiring the state ombudsman to submit an annual report to the Governor, the Legislature, and specified agencies and entities; amending s. 400.0067, F.S.; revising duties and membership of the State Long-Term Care Ombudsman Council; amending s. 400.0069, F.S.; requiring the state ombudsman to designate and direct program districts; requiring each district to conduct quarterly public meetings; providing duties of representatives of the office in the districts; revising the appointments of and qualifications for district ombudsmen; prohibiting certain individuals from serving as ombudsmen; amending s. 400.0070, F.S.; providing conditions under which a representative of the office could be found to have a conflict of interest; requiring the Department of Elderly Affairs, in consultation with the state ombudsman, to define by rule what constitutes a conflict of interest; amending

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s. 400.0071, F.S.; requiring the Department of Elderly Affairs to consult with the state ombudsman to adopt rules pertaining to complaint procedures; amending s. 400.0073, F.S.; providing procedures for investigation of complaints; amending s. 400.0074, F.S.; revising procedures for conducting onsite administrative assessments; authorizing the department to adopt rules; amending s. 400.0075, F.S.; revising complaint notification and resolution procedures; amending s. 400.0078, F.S.; providing for a resident or representative of a resident to receive additional information regarding resident rights; amending s. 400.0079, F.S.; providing immunity from liability for a representative of the office under certain circumstances; amending s. 400.0081, F.S.; requiring long-term care facilities to provide representatives of the office with access to facilities, residents, and records for certain purposes; amending s. 400.0083, F.S.; conforming provisions to changes made by the act; amending s. 400.0087, F.S.; providing for the office to coordinate ombudsman services with Disability Rights Florida; amending s. 400.0089, F.S.; conforming provisions to changes made by the act; amending s. 400.0091, F.S.; revising training requirements for representatives of the office and ombudsmen; amending ss. 20.41, 400.021, 400.022, 400.0255, 400.162, 400.19, 400.191, and 400.23, F.S.; conforming provisions to changes made by the act; amending s. 400.235, F.S.; conforming provisions to

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changes made by the act; revising the additional criteria for recognition as a Gold Seal Program facility; amending ss. 415.102, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, and 429.85, 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. Section 400.0060, Florida Statutes, is amended to read:

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

(1) "Administrative assessment" means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Department" means the Department of Elderly Affairs.

(4) "District" means a geographical area designated by the state ombudsman in which individuals certified as ombudsmen carry out the duties of the State Long-Term Care Ombudsman Program. A district may have one or more local councils.

(5) ~~(4)~~ "Local council" means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term

care ombudsman councils or district councils.

(6) ~~(5)~~ "Long-term care facility" means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.

(7) ~~(6)~~ "Office" means the Office of the State Long-Term Care Ombudsman Program created by s. 400.0063.

(8) ~~(7)~~ "Ombudsman" means an individual who has been certified by the state ombudsman as meeting the requirements of ss. 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the Secretary of Elderly Affairs to head the Office of State Long-Term Care Ombudsman~~.

(9) "Representative of the State Long-Term Care Ombudsman Program" means the state ombudsman, an employee of the state or district office certified as an ombudsman or an individual certified as an ombudsman serving on the state or a local council.

(10) ~~(8)~~ "Resident" means an individual 18 ~~60~~ years of age or older who resides in a long-term care facility.

(11) ~~(9)~~ "Secretary" means the Secretary of Elderly Affairs.

(12) ~~(10)~~ "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

(13) "State ombudsman" means the State Long-Term Care Ombudsman, who is the individual appointed by the Secretary of Elderly Affairs to head the State Long-Term Care Ombudsman Program.

(14) "State ombudsman program" means the State Long-Term Care Ombudsman Program operating under the direction of the State Long Term Care Ombudsman.

Section 2. Section 400.0061, Florida Statutes, is amended to read:

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees~~,~~ or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to use ~~utilize~~ voluntary citizen ombudsman councils under the leadership of the State Long-Term Care Ombudsman ~~ombudsman,~~ and, through them, to operate a state ~~an~~ ombudsman program, which shall, without interference by any executive agency, undertake

to discover, investigate, and determine the presence of conditions or individuals that ~~which~~ constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the representatives of the State Long-Term Care Ombudsman Program ~~ombudsman and ombudsman councils and their designated representatives~~ not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by representatives of the State Long-Term Care Ombudsman Program ~~ombudsman councils~~ shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

Section 3. Section 400.0063, Florida Statutes, is amended to read:

400.0063 Establishment of the ~~Office of~~ State Long-Term Care Ombudsman Program; designation of ombudsman and legal advocate.—

(1) There is created the ~~an Office of~~ State Long-Term Care Ombudsman Program in the Department of Elderly Affairs.

(2)(a) The ~~Office of~~ State Long-Term Care Ombudsman Program shall be headed by the State Long-Term Care Ombudsman, who shall serve on a full-time basis and shall personally, or through representatives of the program ~~office~~, carry out its ~~the~~ purposes and functions ~~of the office~~ in accordance with state

and federal law.

(b) The state ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs. The secretary shall appoint a person who has expertise and experience in the fields of long-term care and advocacy to serve as state ombudsman.

(3)(a) There is created in the office the position of legal advocate, who shall be selected by and serve at the pleasure of the state ombudsman and shall be a member in good standing of The Florida Bar.

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the state ombudsman in carrying out the duties of the office with respect to the abuse, neglect, exploitation or violation of rights of residents of long-term care facilities.

2. Assisting the representatives of the State Long-Term Care Ombudsman Program ~~state and local councils~~ in carrying out their responsibilities under this part.

3. Pursuing administrative, legal, and other appropriate remedies on behalf of residents.

4. Serving as legal counsel to the representatives of the State Long-Term Care Ombudsman Program in ~~state and local councils, or individual members thereof, against whom~~ any suit or other legal action that is initiated in connection with the performance of the official duties of the representatives of the State Long-Term Care Ombudsman Program ~~councils or an individual member~~.

Section 4. Section 400.0065, Florida Statutes, is amended

to read:

400.0065 State Long-Term Care Ombudsman Program; duties and responsibilities.—

(1) The purpose of the ~~Office of~~ State Long-Term Care Ombudsman Program is ~~shall be~~ to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services that assist in protecting the health, safety, welfare, and rights of residents.

(c) Inform residents, their representatives, and other citizens about obtaining the services of the State Long-Term Care Ombudsman Program and its representatives.

(d) Ensure that residents have regular and timely access to the services provided through the State Long-Term Care Program ~~office~~ and that residents and complainants receive timely responses from representatives of the State Long-Term Care Program ~~office~~ to their complaints.

(e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Administer the state and local councils.

(g) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, rules, and regulations, and other governmental policies and actions, that

pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, and recommend any changes in such laws, rules, regulations, policies, and actions as the office determines to be appropriate and necessary.

(h) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

(2) The State Long-Term Care Ombudsman has ~~shall have~~ the duty and authority to:

(a) Establish and coordinate districts and local councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of appropriated federal and state funding, employ such personnel ~~as are~~ necessary to perform adequately the functions of the office and provide or contract for legal services to assist the representatives of the State Long-Term Care Ombudsman Program ~~state and local councils~~ in the performance of their duties. Staff positions established for the purpose of coordinating the activities of each local council and assisting its members may be filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person shall be considered a representative of the State Long-Term Care Ombudsman Program for purposes of this part.

(d) Contract for services necessary to carry out the

activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Coordinate, to the greatest extent possible, state and local ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

~~(g) Enter into a cooperative agreement with the Statewide Advocacy Council for the purpose of coordinating and avoiding duplication of advocacy services provided to residents.~~

(g) ~~(h)~~ Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of the Older Americans Act.

(h) ~~(i)~~ Prepare an annual report describing the activities carried out by the office, the state council, the districts and the local councils in the year for which the report is prepared. The state ombudsman shall submit the report to the secretary, the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Families, and the Secretary of the Agency for Health Care Administration at least 30 days before the convening of the regular session of the Legislature. ~~The secretary shall in turn submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of~~

~~Representatives, the Secretary of Children and Families, and the Secretary of Health Care Administration.~~ The report must ~~shall~~, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities and the disposition of such complaints.

2. Evaluate the problems experienced by residents.

3. Analyze the successes of the State Long-Term Care Ombudsman Program ~~ombudsman program~~ during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

4. Provide recommendations for policy, regulatory, and statutory changes designed to solve identified problems; resolve residents' complaints; improve residents' lives and quality of care; protect residents' rights, health, safety, and welfare; and remove any barriers to the optimal operation of the State Long-Term Care Ombudsman Program.

5. Contain recommendations from the State Long-Term Care Ombudsman Council regarding program functions and activities and recommendations for policy, regulatory, and statutory changes designed to protect residents' rights, health, safety, and welfare.

6. Contain any relevant recommendations from the representatives of the State Long-Term Care Ombudsman Program ~~local councils~~ regarding program functions and activities.

Section 5. Section 400.0067, Florida Statutes, is amended to read:

400.0067 State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the ~~Office of~~ State Long-Term Care Ombudsman Program, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Serve as an advisory body to assist the state ombudsman in reaching a consensus among districts and local councils on issues affecting residents and impacting the optimal operation of the program.

(b) Serve as an appellate body in receiving from the districts or local councils complaints not resolved at the district or local level. Any individual member or members of the state council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility, and work with the adult protective services program as required in ss. 415.101-415.113.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of residents.

(e) Elicit and coordinate state, district, local, and voluntary organizational assistance for the purpose of improving the care received by residents.

(f) Assist the state ombudsman in preparing the annual report described in s. 400.0065.

(3) The State Long-Term Care Ombudsman Council consists ~~shall be composed~~ of one active certified ombudsman from each local council in a district ~~member elected by each local council~~

plus three at-large members ~~appointed by the Governor~~.

(a) Each local council in a district must select ~~shall elect by majority vote~~ a representative of its choice to serve ~~from among the council members to represent the interests of the local council~~ on the state council. ~~A local council chair may not serve as the representative of the local council on the state council.~~

(b)1. The state ombudsman ~~secretary~~, ~~after consulting with the ombudsman,~~ shall submit to the secretary ~~Governor~~ a list of individuals ~~persons~~ recommended for appointment to the at-large positions on the state council. The list may ~~shall~~ not include the name of any individual ~~person~~ who is currently serving in a district ~~on a local council~~.

2. The secretary ~~Governor~~ shall appoint three at-large members chosen from the list.

~~3. If the Governor does not appoint an at-large member to fill a vacant position within 60 days after the list is submitted, the secretary, after consulting with the ombudsman, shall appoint an at-large member to fill that vacant position.~~

(4)(a) ~~(c)~~1. ~~All~~ state council members shall serve 3-year terms.

2. A member of the state council may not serve more than two consecutive terms.

3. A local council may recommend replacement ~~removal~~ of its selected ~~elected~~ representative from the state council ~~by a majority vote~~. If the council votes to replace ~~remove~~ its representative, the local council chair shall immediately notify the state ombudsman. ~~The secretary shall advise the Governor of the local council's vote upon receiving notice from the~~

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~~ombudsman.~~

4. The position of any member missing three state council meetings within a 1-year period without cause may be declared vacant by the state ombudsman. The findings of the state ombudsman regarding cause shall be final and binding.

(b) ~~5.~~ Any vacancy on the state council shall be filled in the same manner as the original appointment.

(c) ~~(d)~~1. The state council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms.

2. The chair shall select a vice chair from among the members. The vice chair shall preside over the state council in the absence of the chair.

3. The chair may create additional executive positions as necessary to carry out the duties of the state council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

4. A chair may be immediately removed from office before ~~prior to~~ the expiration of his or her term by a vote of two-thirds of all state council members present at any meeting at which a quorum is present. If a chair is removed from office before ~~prior to~~ the expiration of his or her term, a replacement chair shall be chosen during the same meeting in the same manner as described in this paragraph, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term and is eligible to serve two subsequent consecutive terms.

(d) ~~(c)~~1. The state council shall meet upon the call of the

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chair or upon the call of the state ombudsman. The state council shall meet at least quarterly but may meet more frequently as needed.

2. A quorum shall be considered present if more than 50 percent of all active state council members are in attendance at the same meeting.

3. The state council may not vote on or otherwise make any decisions resulting in a recommendation that will directly impact the state council, the district, or any local council, outside of a publicly noticed meeting at which a quorum is present.

(e) ~~(f)~~ Members may not ~~shall~~ receive ~~no~~ compensation for attendance at state council meetings but shall, with approval from the state ombudsman, be reimbursed for per diem and travel expenses as provided in s. 112.061.

Section 6. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Long-term care ombudsman districts; local long-term care ombudsman councils; duties; appointment ~~membership~~.—

(1)(a) The state ombudsman shall designate districts and each district shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each district ~~local council~~ shall function under the direction of the state ombudsman.

(b) The state ombudsman shall ensure that there is at least one employee of the department certified as a long-term care ombudsman and a least one local council operating in each district ~~of the department's planning and service areas~~. The

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state ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. ~~The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.~~

(c) Each district shall convene a public meeting every quarter or as needed.

(2) The duties of the representatives of the State Long-Term Care Ombudsman Program ~~local councils~~ are to:

(a) Provide services to assist in ~~Serve as a third-party mechanism for~~ protecting the health, safety, welfare, and ~~civil and human~~ rights of residents.

(b) Discover, investigate, and determine the existence of abuse, ~~or~~ neglect, or exploitation in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable.

(c) Identify ~~Elicit, receive~~, investigate, ~~respond to~~, and resolve complaints made by or on behalf of residents relating to actions or omissions by providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.

(d) Review and, if necessary, comment on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the ~~rights~~, health, safety, welfare, and rights ~~welfare~~ of residents.

(e) Review personal property and money accounts of

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residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint ~~or problem~~.

(f) Recommend that the state ombudsman and the legal advocate seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of ~~the~~ residents.

(g) Provide technical assistance for the development of resident and family councils within long-term care facilities.

(h) ~~(g)~~ Carry out other activities that the state ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), a representative of the State Long-Term Care Ombudsman Program or a member of a local council is authorized to enter any long-term care facility without notice or first obtaining a warrant; however, ~~subject to the provisions of~~ s. 400.0074(2) may apply regarding notice of a followup administrative assessment.

(4) Each district and local council shall be composed of ombudsmen ~~members~~ whose primary residences are ~~residence is~~ located within the boundaries of the district ~~local council's jurisdiction~~.

(a) Upon good cause shown and with the consent of the ombudsman, the state ombudsman may appoint an ombudsman to another district. The ombudsman shall strive to ensure that each local council include the following persons as members:

1. At least one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may practice in a long-term care

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facility;

2. At least one registered nurse who has geriatric experience;

3. At least one licensed pharmacist;

4. At least one registered dietitian;

5. At least six nursing home residents or representative consumer advocates for nursing home residents;

6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;

7. At least one attorney; and

8. At least one professional social worker.

(b) The following individuals may not be appointed as ombudsmen:

1. The owner or representative of a long-term care facility.

2. A provider or representative of a provider of long-term care service.

3. An employee of the agency.

4. An employee of the department, except for staff certified as ombudsmen in the district offices.

5. An employee of the Department of Children and Families.

6. An employee of the Agency for Persons with Disabilities.

~~(b) In no case shall the medical director of a long-term care facility or an employee of the agency, the department, the Department of Children and Families, or the Agency for Persons with Disabilities serve as a member or as an ex officio member of a council.~~

(5)(a) To be appointed as an ombudsman, an individual must:

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1. ~~Individuals wishing to join a local council shall~~ Submit an application to the state ombudsman or his or her designee. ~~The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.~~

2. Successfully complete a level 2 background screening pursuant to s. 430.0402 and chapter 435.

(b) The state ombudsman shall approve or deny the appointment of the individual as an ombudsman ~~secretary may rescind the ombudsman's approval of a member on a local council at any time~~. If the state ombudsman ~~secretary~~ rescinds the approval of a member on a local council, the state ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the state ombudsman ~~secretary~~ provides his or her approval.

(c) Upon appointment as an ombudsman, the individual may participate in district activities but may not represent the program or conduct any authorized program duties until the individual has completed the initial training specified in s. 400.0091(1) and has been certified by the state ombudsman.

(d) The state ombudsman may rescind the appointment of an individual as an ombudsman for good cause shown, such as development of a conflict of interest, failure to adhere to the policies and procedures established by the State Long Term Care

Program, or demonstrative inability to carry out the responsibilities of the State Long Term Care Program. After the appointment is rescinded, the individual may not conduct any duties as an ombudsman and may not represent the State Long-Term Care Ombudsman Program.

(e) ~~(c)~~ A local council may recommend the removal of one or more of its members by submitting to the state ombudsman a resolution adopted by a two-thirds vote of the members of the council stating the name of the member or members recommended for removal and the reasons for the recommendation. If such a recommendation is adopted by a local council, the local council chair or district manager ~~coordinator~~ shall immediately report the council's recommendation to the state ombudsman. The state ombudsman shall review the recommendation of the local council and advise the district manager and local council chair ~~secretary~~ of his or her decision ~~recommendation~~ regarding removal of the council member or members.

(6)(a) Each local council shall elect a chair for a term of 1 year. There shall be no limitation on the number of terms that an approved member of a local council may serve as chair.

(b) The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(c) The chair may create additional executive positions as necessary to carry out the duties of the local council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

(d) A chair may be immediately removed from office prior to

the expiration of his or her term by a vote of two-thirds of the members of the local council. If any chair is removed from office before ~~prior to~~ the expiration of his or her term, a replacement chair shall be elected during the same meeting, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term of the person he or she replaced.

(7) Each local council shall meet upon the call of its chair or upon the call of the ombudsman. Each local council shall meet at least once a month but may meet more frequently if necessary.

(8) An ombudsman may not ~~A member of a local council shall~~ receive ~~no~~ compensation but shall, with approval from the state ombudsman, be reimbursed for travel expenses ~~both within and outside the jurisdiction of the local council~~ in accordance with the provisions of s. 112.061.

(9) A representative of the State Long-Term Care Ombudsman Program may ~~The local councils are authorized to~~ call upon appropriate state agencies ~~of state government~~ for ~~such~~ professional assistance as ~~may be~~ needed in the discharge of his or her ~~their~~ duties, and such~~. All~~ state agencies shall cooperate ~~with the local councils~~ in providing requested information and agency representation ~~at council meetings~~.

Section 7. Section 400.0070, Florida Statutes, is amended to read:

400.0070 Conflicts of interest.—

(1) A representative of the State Long-Term Care Ombudsman Program may ~~The ombudsman shall~~ not:

(a) Have a direct involvement in the licensing or

certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

(2) Each representative of the State Long-Term Care Ombudsman Program ~~employee of the office, each state council member, and each local council member~~ shall certify that he or she does not have a ~~has no~~ conflict of interest.

(3) The department, in consultation with the state ombudsman, shall define by rule:

(a) Situations that constitute a ~~person having a~~ conflict of interest which ~~that~~ could materially affect the objectivity or capacity of an individual ~~a person~~ to serve as a representative of the State Long-Term Care Ombudsman Program while carrying out the purposes of the State Long-Term Care Program as specified in this part ~~on an ombudsman council, or as an employee of the office, while carrying out the purposes of the State Long-Term Care Ombudsman Program as specified in this part~~.

(b) The procedure by which an individual ~~a person~~ listed in subsection (2) must ~~shall~~ certify that he or she does not have a ~~has no~~ conflict of interest.

Section 8. Section 400.0071, Florida Statutes, is amended to read:

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—The department, in consultation with the state ombudsman, shall adopt rules implementing state and local complaint procedures. The rules must include procedures for receiving, investigating, identifying, and resolving complaints concerning the health, safety, welfare, and rights of residents.~~:~~

~~(1) Receiving complaints against a long-term care facility or an employee of a long-term care facility.~~

~~(2) Conducting investigations of a long-term care facility or an employee of a long-term care facility subsequent to receiving a complaint.~~

~~(3) Conducting onsite administrative assessments of long-term care facilities.~~

Section 9. Section 400.0073, Florida Statutes, is amended to read:

400.0073 State and local ombudsman council investigations.—

(1) A representative of the State Long-Term Care Ombudsman Program ~~local council~~ shall identify and investigate, within a reasonable time after a complaint is made, by or on behalf ~~any complaint~~ of a resident relating to actions or omissions by providers or representatives of providers of long-term care services, other public agencies, guardians, or representative payees which may adversely affect the health, safety, welfare, or rights of residents.~~, a representative of a resident, or any other credible source based on an action or omission by an administrator, an employee, or a representative of a long-term care facility which might be:~~

~~(a) Contrary to law;~~

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~~(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;~~

~~(c) Based on a mistake of fact;~~

~~(d) Based on improper or irrelevant grounds;~~

~~(e) Unaccompanied by an adequate statement of reasons;~~

~~(f) Performed in an inefficient manner; or~~

~~(g) Otherwise adversely affecting the health, safety, welfare, or rights of a resident.~~

~~(2) In an investigation, both the state and local councils have the authority to hold public hearings.~~

(2)~~(3)~~ Subsequent to an appeal from a local council, the state council may investigate any complaint received by the local council involving a long-term care facility or a resident.

(3)~~(4)~~ If a representative of the State Long-Term Care Ombudsman Program ~~the ombudsman or any state or local council member~~ is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or the local council~~ in the performance of official duties as described in s. 400.0083(1) and to have violated ~~committed a violation of~~ this part. The representative of the State Long-Term Care Ombudsman Program ~~ombudsman~~ shall report a facility's refusal to allow entry to the state ombudsman or his or her designee, who shall report the incident to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

Section 10. Section 400.0074, Florida Statutes, is amended

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to read:

400.0074 Local ombudsman council onsite administrative assessments.—

(1) A representative of the State Long-Term Care Ombudsman Program shall ~~In addition to any specific investigation conducted pursuant to a complaint, the local council shall~~ conduct, at least annually, an onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home ~~within its jurisdiction~~. This administrative assessment must be resident-centered and must ~~shall~~ focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.

(2) An onsite administrative assessment conducted by a local council shall be subject to the following conditions:

(a) To the extent possible and reasonable, the administrative assessment may ~~assessments shall~~ not duplicate the efforts of ~~the agency~~ surveys and inspections of long-term care facilities conducted by state agencies ~~under part II of this chapter and parts I and II of chapter 429~~.

(b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to complete the assessment ~~carry out the duties of the local council~~.

(c) Advance notice of an administrative assessment may not be provided to a long-term care facility, except that notice of followup assessments on specific problems may be provided.

(d) A representative of the State Long-Term Care Ombudsman

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Program ~~local council member physically~~ present for the administrative assessment must ~~shall~~ identify himself or herself to the administrator ~~and cite the specific statutory authority for his or her assessment~~ of the facility or his or her designee.

(e) An administrative assessment may not unreasonably interfere with the programs and activities of residents.

(f) A representative of the State Long-Term Care Ombudsman Program ~~local council member~~ may not enter a single-family residential unit within a long-term care facility during an administrative assessment without the permission of the resident or the representative of the resident.

(g) An administrative assessment must be conducted in a manner that does not impose an ~~will impose no~~ unreasonable burden on a long-term care facility.

(3) Regardless of jurisdiction, the state ombudsman may authorize a state or local council member to assist another local council to perform the administrative assessments described in this section.

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if a representative of the State Long-Term Care Ombudsman Program ~~the ombudsman or a state or local council member~~ is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or the local council~~ in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The representative of the State Long-Term Care

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Ombudsman Program ~~ombudsman~~ shall report the refusal by a facility to allow entry to the state ombudsman or his or her designee, who shall report the incident to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

(5) The department, in consultation with the state ombudsman, may adopt rules implementing procedures for conducting onsite administrative assessments of long-term care facilities.

Section 11. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint ~~or problem~~ verified by a representative of the State Long-Term Care Ombudsman Program ~~an ombudsman council~~ as a result of an investigation which is determined by the local council to require remedial action may ~~or onsite administrative assessment, which complaint or problem is determined to require remedial action by the local council, shall~~ be identified and brought to the attention of the long-term care facility administrator subject to the confidentiality provisions of s. 400.0077 ~~in writing~~. Upon receipt of the information ~~such document~~, the administrator, with the concurrence of the representative of the State Long-Term Care Ombudsman Program ~~local council chair~~, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the representative of the State Long-Term Care Ombudsman Program may extend the target date if there is reason to believe such action

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would facilitate the resolution of the complaint, or the representative of the State Long-Term Care Ombudsman Program may refer the complaint to the district manager who may refer the complaint to the state council. ~~local council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:~~

~~1. Extend the target date if the chair has reason to believe such action would facilitate the resolution of the complaint.~~

~~2. In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.~~

~~3. Refer the complaint to the state council.~~

(b) If the representative of the State Long-Term Care Ombudsman Program determines ~~local council chair believes~~ that the health, safety, welfare, or rights of a ~~the~~ resident are in imminent danger, the representative of the State Long-Term Care Ombudsman Program must immediately ~~the chair shall~~ notify the district manager and local council chair. ~~ombudsman or legal advocate, who,~~ The district manager or local council chair, after verifying that such imminent danger exists, must notify the appropriate state agencies, including law enforcement agencies, the state ombudsman, and the legal advocate to ensure the protection of ~~shall seek immediate legal or administrative remedies to protect~~ the resident.

(c) If the state ombudsman or legal advocate has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the state ombudsman or legal advocate shall provide the local law enforcement agency

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with the relevant information to initiate an investigation of the case.

(2) ~~(a)~~ Upon referral from a district or local council, the state ombudsman or his or her designee ~~council~~ shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action to resolve or remedy the ~~on a~~ complaint ~~by the state council~~, the state ombudsman ~~council~~ may, ~~after obtaining approval from the ombudsman and a majority of the state council members~~:

(a) ~~1.~~ In accordance with s. 400.0077, publicize the complaint, the recommendations of the local or state council, and the response of the long-term care facility.

(b) ~~2.~~ Recommend to the department and the agency a series of facility reviews pursuant to s. 400.19, s. 429.34, or s. 429.67 to ensure correction and nonrecurrence of the conditions that gave ~~give~~ rise to the complaint ~~complaints~~ against the ~~a~~ long-term care facility.

(c) ~~3.~~ Recommend to the department and the agency that the long-term care facility no longer receive payments under any state assistance program, including Medicaid.

(d) ~~4.~~ Recommend to the department and the agency that procedures be initiated for action against ~~revocation of~~ the long-term care facility's license in accordance with chapter 120.

~~(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the~~

~~resident.~~

(3) ~~(c)~~ If the state ombudsman, after consultation with the legal advocate, has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the state ombudsman shall provide the local law enforcement agency with the relevant information to initiate an investigation of the case.

Section 12. Section 400.0078, Florida Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(1) The office shall establish a statewide toll-free telephone number and e-mail address for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents.

(2) ~~Every resident or representative of a resident shall receive,~~ Upon admission to a long-term care facility, each resident or representative of a resident must receive information regarding:

(a) The purpose of the State Long-Term Care Ombudsman Program~~,~~;

(b) The statewide toll-free telephone number and e-mail address for receiving complaints~~;, and~~

(c) Information that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident rights.

(d) Other relevant information regarding how to contact representatives of the State Long Term Care Ombudsman Program ~~the program~~.

Residents or their representatives must be furnished additional copies of this information upon request.

Section 13. Section 400.0079, Florida Statutes, is amended to read:

400.0079 Immunity.—

(1) Any person making a complaint pursuant to this part who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed as a direct or indirect result of making the complaint.

(2) Representatives of the State Long-Term Care Ombudsman Program are ~~The ombudsman or any person authorized by the ombudsman to act on behalf of the office, as well as all members of the state and local councils, shall be~~ immune from any liability, civil or criminal, that otherwise might be incurred or imposed during the good faith performance of official duties.

Section 14. Section 400.0081, Florida Statutes, is amended to read:

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide representatives of the State Long-Term Care Program with ~~the office, the state council and its members, and the local councils and their members~~ access to:

(a) ~~Any portion of~~ The long-term care facility and its residents ~~any resident as necessary to investigate or resolve a complaint~~.

(b) Where appropriate, medical and social records of a resident for review ~~as necessary to investigate or resolve a complaint,~~ if:

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1. The representative of the State Long-Term Care Ombudsman Program ~~office~~ has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and does not have a ~~has no~~ legal representative.

(c) Medical and social records of a ~~the~~ resident as necessary to investigate ~~or resolve~~ a complaint, if:

1. A legal representative or guardian of the resident refuses to give permission;

2. The representative of the State Long-Term Care Ombudsman Program ~~office~~ has reasonable cause to believe that the legal representative or guardian is not acting in the best interests of the resident; and

3. The representative of the State Long-Term Care Ombudsman Program ~~state or local council member~~ obtains the approval of the state ombudsman.

(d) Access to ~~The~~ administrative records, policies, and documents to which residents or the general public have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) The department, in consultation with the state ombudsman ~~and the state council,~~ may adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.

Section 15. Section 400.0083, Florida Statutes, is amended to read:

400.0083 Interference; retaliation; penalties.—

(1) A ~~It shall be unlawful for any~~ person, long-term care

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facility, or other entity may not ~~to~~ willfully interfere with a representative of the State Long-Term Care Ombudsman Program ~~office, the state council, or a local council~~ in the performance of official duties.

(2) A ~~It shall be unlawful for any~~ person, long-term care facility, or other entity may not ~~to~~ knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the State Long Term-Care Ombudsman Program ~~office, the state council, or a local council~~.

(3) A ~~Any~~ person, long-term care facility, or other entity that violates this section:

(a) Is ~~Shall be~~ liable for damages and equitable relief as determined by law.

(b) Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

Section 16. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Department oversight; funding.—

(1) The department shall meet the costs associated with the State Long-Term Care Ombudsman Program from funds appropriated to it.

(a) The department shall include the costs associated with support of the State Long-Term Care Ombudsman Program when developing its budget requests for consideration by the Governor and submittal to the Legislature.

(b) The department may divert from the federal ombudsman appropriation an amount equal to the department's administrative

cost ratio to cover the costs associated with administering the State Long-Term Care Ombudsman Program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

(2) The department shall monitor the State Long-Term Care Ombudsman Program ~~office~~, the state council, and the local councils to ensure that each is carrying out the duties delegated to it by state and federal law.

(3) The department is responsible for ensuring that the State Long-Term Care Ombudsman Program ~~office~~:

(a) Has the objectivity and independence required to qualify it for funding under the federal Older Americans Act.

(b) Provides information to public and private agencies, legislators, and others.

(c) Provides appropriate training to representatives of the State Long-Term Care Ombudsman Office ~~or of the state or local councils~~.

(d) Coordinates ombudsman services with Disability Rights Florida, the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(4) The department shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman has formulated in accordance with the Older Americans Act.

(b) Whenever necessary, act as liaison between agencies and branches of the federal and state governments and the State Long-Term Care Ombudsman Program.

Section 17. Section 400.0089, Florida Statutes, is amended

to read:

400.0089 Complaint data reports.—The State Long-Term Care Ombudsman Program ~~office~~ shall maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving complaints ~~significant problems~~. ~~The office shall publish quarterly and make readily available~~ Information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program shall be published quarterly and made readily available and shall include such information in the annual report required under s. 400.0065.

Section 18. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.—The state ombudsman shall ensure that appropriate training is provided to all representatives of the State Long-Term Care Ombudsman Program ~~employees of the office and to the members of the state and local councils~~.

(1) All representatives of the State Long-Term Care Ombudsman Program ~~state and local council members and employees of the office~~ shall be given a minimum of 20 hours of training upon employment with the State Long-Term Care Ombudsman Program ~~office~~ or appointment as an ombudsman. Ten ~~approval as a state or local council member and 10~~ hours of training in the form of continuing education is required annually thereafter.

(2) The state ombudsman shall approve the curriculum for the initial and continuing education training, which must, at a minimum, address:

(a) Resident confidentiality.

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(b) Guardianships and powers of attorney.

(c) Medication administration.

(d) Care and medication of residents with dementia and Alzheimer's disease.

(e) Accounting for residents' funds.

(f) Discharge rights and responsibilities.

(g) Cultural sensitivity.

(h) Any other topic related to residency in a long-term care facility ~~recommended by the secretary~~.

(3) An individual ~~No employee, officer, or representative of the office or of the state or local councils,~~ other than the state ombudsman, may not hold himself or herself out as a representative of the State Long-Term Care Ombudsman Program or conduct any authorized program duty described in this part unless the individual ~~person~~ has received the training required by this section and has been certified by the state ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local councils.

Section 19. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(4) The department shall administer the State Long-Term Care Ombudsman Program ~~Council~~, created by s. 400.0063 ~~400.0067, and the local long-term care ombudsman councils, created by s. 400.0069~~ and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that ~~both~~ the State Long Term Care Ombudsman Program operates ~~state and local long-term care ombudsman councils operate~~ in compliance with the Older

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Americans Act.

Section 20. Subsections (14) through (19) of section 400.021, Florida Statutes, are amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(14) "Office" has the same meaning as in s. 400.0060.

(15) ~~(14)~~ "Planning and service area" means the geographic area in which the Older Americans Act programs are administered and services are delivered by the Department of Elderly Affairs.

(16) "Representative of the State Long Term Care Ombudsman Program" has the same meaning as in s. 400.0060.

(17) ~~(15)~~ "Respite care" means admission to a nursing home for the purpose of providing a short period of rest or relief or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.

(18) ~~(16)~~ "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals.

(19) ~~(17)~~ "Resident designee" means a person, other than the owner, administrator, or employee of the facility, designated in

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writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose.

(20) ~~(18)~~ "State Long Term Care Ombudsman Program ~~ombudsman council~~" has the same meaning as in s. 400.0060 ~~means the State Long-Term Care Ombudsman Council established pursuant to s. 400.0067~~.

(21) ~~(19)~~ "Therapeutic spa services" means bathing, nail, and hair care services and other similar services related to personal hygiene.

Section 21. Paragraph (c) of subsection (1) and subsections (2), and (3) of section 400.022, Florida Statutes, are amended to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency

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for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long Term Care Ombudsman Program ~~members of the state or local ombudsman council~~; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Program ~~Council~~ to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or state or local ombudsman council. The statement must be in boldfaced type and ~~shall~~ include the ~~name, address, and~~ telephone number and e-mail address of the State Long Term Care Ombudsman Program, the numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families ~~central abuse hotline where complaints may be lodged~~.

(3) Any violation of the resident's rights set forth in this section constitutes ~~shall constitute~~ grounds for action by the agency under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility must ~~shall~~ include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards~~,~~ and consultation with the State Long-Term Care Ombudsman Program ~~ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located~~.

Section 22. Subsections (8), (9), and (11) through (14) of section 400.0255, Florida Statutes, are amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident

is being discharged or transferred, with an explanation to support this action. Further, the form must ~~shall~~ state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form must ~~shall~~ clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council ~~to~~ review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(9) A resident may request that the State Long-Term Care Ombudsman Program or local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator's designee, must forward the request for review contained in the notice to the State Long-Term Care Ombudsman Program or local ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the ~~period of~~ time after the notice is given and before the time a hearing decision is

rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the State Long-Term Care Ombudsman Program or the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. The State Long-Term Care Ombudsman Program or a ~~A~~ local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the State Long-Term Care Ombudsman Program or local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with ~~the requirements of~~ this section. If requested, the State Long-Term Care Ombudsman Program or the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

(a) The resident, or the resident's legal representative or designee.

(b) The facility administrator, or the facility's legal

representative or designee.

A representative of the State Long-Term Care Ombudsman Program or the local long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1):

(a) Names and addresses.

(b) Medical services provided.

(c) Social and economic conditions or circumstances.

(d) Evaluation of personal information.

(e) Medical data, including diagnosis and past history of disease or disability.

(f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by the State Long-Term Care Ombudsman Program or a local long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

Section 23. Paragraph (d) of subsection (5) of section 400.162, Florida Statutes, is amended to read:

400.162 Property and personal affairs of residents.—

(5)

(d) If, at any time during the period for which a license is issued, a licensee that has not purchased a surety bond or entered into a self-insurance agreement, as provided in paragraphs (b) and (c), is requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the agency of the request and make application for a surety bond or for participation in a self-insurance agreement within 7 days after ~~of~~ the request, exclusive of weekends and holidays. Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained by the licensee for review by the agency and the State ~~Nursing Home and~~ Long-Term Care ~~Facility~~ Ombudsman Program ~~Council~~.

Section 24. Subsections (1) and (4) of section 400.19, Florida Statutes, are amended to read:

400.19 Right of entry and inspection.—

(1) In accordance with part II of chapter 408, the agency and any of its ~~duly~~ designated officers ~~officer~~ or employees ~~employee thereof~~ or a representative of ~~member of~~ the State Long-Term Care Ombudsman Program ~~Council~~ or the local long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 which ~~that~~ provides extended care or other long-term care services, at any reasonable time in order to determine the state of compliance with ~~the provisions of~~ this part, part II of chapter 408, and applicable rules in force pursuant thereto. The

agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

(4) The agency shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a representative of the State Long-Term Care Ombudsman Program or long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

Section 25. Subsection (6) and paragraph (c) of subsection (7) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(6) Before ~~Prior to~~ conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the

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agency's inspection process. This procedure does not preclude the State Long-Term Care Ombudsman Program or local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. In addition to license categories authorized under part II of chapter 408, the agency shall assign a licensure status of standard or conditional to each nursing home.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, representatives of the State Long-Term Care Ombudsman Program ~~ombudsman council members in the planning and service area in which the facility is located~~, guardians of residents, and staff of the nursing home facility.

Section 26. Paragraph (a) of subsection (3), paragraph (f) of subsection (5), and subsection (6) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

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(3)(a) The Gold Seal Program shall be developed and implemented by the Governor's Panel on Excellence in Long-Term Care which shall operate under the authority of the Executive Office of the Governor. The panel shall be composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; a representative of the State Long-Term Care Ombudsman Program; one person appointed by the Florida Life Care Residents Association; one person appointed by the State Surgeon General; two persons appointed by the Secretary of Health Care Administration; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies on the panel shall be filled in the same manner as the original appointments.

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(f) Evidence that verified ~~an outstanding record regarding the number and types of substantiated~~ complaints reported to the State Long-Term Care Ombudsman Program ~~Council~~ within the 30 months preceding application for the program.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II

deficiencies and has completed a regularly scheduled relicensure survey.

(6) The agency, nursing facility industry organizations, consumers, State Long-Term Care Ombudsman Program ~~Council~~, and members of the community may recommend to the Governor facilities that meet the established criteria for consideration for and award of the Gold Seal. The panel shall review nominees and make a recommendation to the Governor for final approval and award. The decision of the Governor is final and is not subject to appeal.

Section 27. Subsections (18) through (28) of section 415.102, Florida Statutes, are redesignated as subsections (19) through and (29), respectively, and a new subsection (18) is added to that section, to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(18) "Office" has the same meaning as in s. 400.0060.

Section 28. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. ~~An~~ Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council member~~; or

8. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 29. Subsection (1) of section 415.104, Florida Statutes, is amended to read:

415.104 Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.—

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged

therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council~~ may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

Section 30. Subsection (8) of section 415.1055, Florida Statutes, is amended to read:

415.1055 Notification to administrative entities.—

(8) At the conclusion of a protective investigation at a facility, the department shall notify either the Florida local advocacy council or the State Long-Term Care Ombudsman Program

or the long-term care ombudsman council of the results of the investigation. This notification must be in writing.

Section 31. Subsection (2) of section 415.106, Florida Statutes, is amended to read:

415.106 Cooperation by the department and criminal justice and other agencies.—

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Program ~~Council~~, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

Section 32. Paragraph (g) of subsection (3) of section 415.107, Florida Statutes, is amended to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(g) Any appropriate official of the Florida advocacy council, State Long-Term Care Ombudsman Program or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

Section 33. Present subsections (16) through (26) of section 429.02, Florida Statutes, are redesignated as subsections (17) through (27), respectively, present subsections (11) and (20) are amended, and a new subsection (16) is added to that section to read:

429.02 Definitions.—When used in this part, the term:

(11) "Extended congregate care" means acts beyond those authorized in subsection (17) ~~(16)~~ that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(16) "Office" has the same meaning as in s. 400.0060.

(17)~~(16)~~ "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

(18)~~(17)~~ "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose.

The term shall not include bandage material used for the purpose of binding a wound or injury.

(19) ~~(18)~~ "Relative" means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

(20) ~~(19)~~ "Resident" means a person 18 years of age or older, residing in and receiving care from a facility.

(21) ~~(20)~~ "Resident's representative or designee" means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to s. 429.24; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the State Long-Term Care Ombudsman Program or local ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 429.29.

(22) ~~(21)~~ "Service plan" means a written plan, developed and agreed upon by the resident and, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal

preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

(23) ~~(22)~~ "Shared responsibility" means exploring the options available to a resident within a facility and the risks involved with each option when making decisions pertaining to the resident's abilities, preferences, and service needs, thereby enabling the resident and, if applicable, the resident's representative or designee, or the resident's surrogate, guardian, or attorney in fact, and the facility to develop a service plan which best meets the resident's needs and seeks to improve the resident's quality of life.

(24) ~~(23)~~ "Supervision" means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.

(25) ~~(24)~~ "Supplemental security income," Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(26) ~~(25)~~ "Supportive services" means services designed to encourage and assist aged persons or adults with disabilities to remain in the least restrictive living environment and to maintain their independence as long as possible.

(27) ~~(26)~~ "Twenty-four-hour nursing supervision" means services that are ordered by a physician for a resident whose

condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services shall be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or stage.

Section 34. Subsection (9) of section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(9) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Families, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, ~~and~~ the State Long-Term Care Ombudsman Program and state and local ombudsman councils. The Department of Children and Families shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list. This information may be provided electronically or through the

agency's Internet site.

Section 35. Subsection (8) of section 429.26, Florida Statutes, is amended to read:

429.26 Appropriateness of placements; examinations of residents.—

(8) The Department of Children and Families may require an examination for supplemental security income and optional state supplementation recipients residing in facilities at any time and shall provide the examination whenever a resident's condition requires it. Any facility administrator; personnel of the agency, the department, or the Department of Children and Families; or a representative of the State Long-Term Care Ombudsman Program ~~long-term care ombudsman council member~~ who believes a resident needs to be evaluated shall notify the resident's case manager, who shall take appropriate action. A report of the examination findings shall be provided to the resident's case manager and the facility administrator to help the administrator meet his or her responsibilities under subsection (1).

Section 36. Subsection (2) and paragraph (b) of subsection (3) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice must ~~shall~~ include the statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone number of ~~name, address, and telephone~~

~~numbers~~ of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families ~~central abuse hotline~~ and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the State Long Term Care Ombudsman Program or local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families ~~central abuse hotline~~, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

(3)

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the district ~~planning and service area~~ in which the facility is located to discuss residents' experiences within the facility.

Section 37. Section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, a ~~any~~ duly designated officer or employee of the department, the Department of Children and Families, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a representative of the State Long-Term Care Ombudsman Program or a member of the state or local long-term care ombudsman council may ~~shall have the right to~~ enter unannounced upon and into the premises of any facility licensed under ~~pursuant to~~ this part in order to determine the state of compliance with ~~the provisions~~

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

~~of~~ this part, part II of chapter 408, and applicable rules. Data collected by the State Long-Term Care Ombudsman Program, ~~state or~~ local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

Section 38. Subsection (2) of section 429.35, Florida Statutes, is amended to read:

429.35 Maintenance of records; reports.—

(2) Within 60 days after the date of the biennial inspection visit required under s. 408.811 or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in in the district ~~whose planning and service area, as defined in part II of chapter 400,~~ where the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.

Section 39. Subsection (6) of section 429.67, Florida Statutes, is amended to read:

429.67 Licensure.—

(6) In addition to the requirements of s. 408.811, access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, the Department of Children and Families, the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire, health, sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a

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

licensed adult family-care home must be provided at reasonable times to representatives of the State Long Term Care Ombudsman Program ~~for the local long-term care ombudsman council~~.

Section 40. Subsection (2) of section 429.85, Florida Statutes, is amended to read:

429.85 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part. Residents must also be given the statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program, the telephone number ~~names, addresses, and telephone numbers~~ of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families ~~the central abuse hotline~~ where they may lodge complaints.

Section 41. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15
Meeting Date

SB 7018
Bill Number (if applicable)

Topic State Ombudsman Program

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title ASD

Address 200 W. College Ave
Street

Tally FL 32301
City *State* *Zip*

Phone 850-577-5163

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP

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)

4/9/2015
Meeting Date

Topic _____ Bill Number 7018 *(if applicable)*

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

Job Title TRUSTEE

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

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

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 7028
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee
SUBJECT:	Educational Opportunities for Veterans
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ryon	Ryon		**Submitted as Committee Bill**
1.	Sikes	Elwell	AED	**Favorable**
2.	Sikes	Kynoch	AP	**Favorable**

I. Summary:

SB 7028 amends the Congressman C.W. "Bill" Young Veteran Tuition Waiver Program to allow additional persons to be eligible for the out-of-state tuition fee waiver currently afforded to honorably discharged veterans residing in Florida and enrolled in a state university, Florida College System institution, career center operated by a school district, or charter technical career center. The bill requires a state university, Florida College System institution, career center operated by a school district, or charter technical career center to waive out-of-state fees for any person who is receiving educational assistance through the U.S. Department of Veterans Affairs and who physically resides in Florida while enrolled in the institution. This addition allows individuals, such as a spouse or child of a veteran or servicemember using GI Bill benefits, to qualify for in-state tuition rates.

In August 2014, the U.S. Congress enacted the Veterans Access, Choice, and Accountability Act of 2014. This Act requires the U.S. Department of Veterans Affairs (USDVA) to disapprove programs of education for payment of benefits under the Post-9/11 GI Bill and the Montgomery GI Bill-AD at public institutions if the schools charge qualifying veterans and dependents tuition and fees in excess of the rate for resident students. Public institutions must offer in-state tuition rates to certain veterans and their dependents by July 1, 2015, in order for the institution to be eligible to receive payments under the Post-9/11 GI Bill and the Montgomery GI Bill-Active Duty programs.

Based on data from the Board of Governors, the estimated fiscal impact of the bill on the State University System for one year is $1,608,419 in unrealized tuition revenue. According to the Department of Education, the estimated fiscal impact is $856,939 in unrealized tuition revenue for the Florida College System. The impact would be insignificant for district career centers based on current enrollment.

The bill provides that it will take effect upon becoming a law.

II. Present Situation:

Tuition and Out-of-State Fees

Under Florida law, "tuition" is defined as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in this state."[1] A student who is classified as a "resident for tuition purposes" is a student who qualifies for the in-state tuition rate.[2]

An "out-of-state fee" is "the additional fee for instruction provided by a public postsecondary education institution in this state, which fee is charged to a student who does not qualify for the in-state tuition rate."[3] A "non-resident for tuition purposes" is defined as a "person who does not qualify for the in-state tuition rate,"[4] and pays the out-of-state fee in addition to tuition.

Residents for tuition purposes are charged in-state rates for tuition while non-residents pay out-of-state fees in addition to tuition, unless such costs are exempted or waived.[5]

Fee Exemptions and Fee Waivers

Florida law provides fee exemptions[6] and fee waivers[7] to qualified students that meet specified criteria. A number of fee exemptions and fee waivers are permissive[8] while others are mandatory.[9]

Through one of the permissive fee waivers, the board of trustees at each state university, as well as school districts, and FCS institutions, are authorized to waive fees under certain conditions. The board of trustees of each state university is authorized to "waive tuition and out-of-state fees for purposes that support and enhance the mission of the university."[10] Similarly, "[s]chool districts and Florida College System institutions may waive fees for any fee-nonexempt student."[11]

The Congressman C.W. "Bill" Young Veteran Tuition Waiver Program

The Congressman C.W. "Bill" Young Veteran Tuition Waiver Program was established during the 2014 Regular Session to waive out-of-state fees for veterans in Florida pursuing higher

[1] Section 1009.01(1), F.S.
[2] Section 1009.21(1)(g), F.S.
[3] Section 1009.01(2), F.S.
[4] Section 1009.21(1)(e), F.S.
[5] Sections 1009.23(2)(a) and 1009.24(2), F.S.
[6] Section 1009.25, F.S.
[7] Section 1009.26, F.S.
[8] Section 1009.25(2), F.S. (authorizing each Florida College System institution to grant additional fee exemptions "up to 54 full-time equivalent students or 1 percent of [an] institution's total full-time equivalent enrollment, whichever is greater at each institution"); ss. 1009.26(1)-(4), (6), (9), (10), (11), F.S.
[9] Section 1009.25(1)(a)-(g), F.S.; ss. 1009.26(5), (7), (8), F.S.
[10] Section 1009.26(9), F.S. (noting that fee waivers under this section must be grounded in policies adopted by the state university board of trustees under regulations adopted by the Board of Governors).
[11] Section 1009.26(1), F.S.

education.[12] Under this program, state universities, Florida College System institutions, career centers operated by a school district, and charter technical career centers are required to waive out-of-state fees for honorably discharged veterans of the U.S. Armed Forces, the U.S. Reserve Forces, or the National Guard who physically reside in Florida while enrolled in the institution.[13] Tuition and fees charged to a veteran who qualifies for the out-of-state fee waiver may not exceed the tuition and fees charged to a resident student. The waiver covers 110 percent of the credit hours the veteran needs to complete the applicable degree or certificate program.[14] Currently, a veteran's dependents are not eligible for the out-of-state veterans' fee waiver.

Purple Heart Recipient Fee Waiver

Florida law also provides a mandatory undergraduate fee waiver for "each recipient of a Purple Heart or another combat decoration superior in precedence" at a state university or Florida College System (FCS) institution.[15] The statute requires that the recipient:[16]

- Be in an undergraduate program that results in a certificate or degree;
- Currently be a resident of the state and has been a resident at the time of the action that resulted in the awarding of the applicable combat decoration; and
- Provide the institution with appropriate documentation of the separation from service and receipt of the combat decoration.

The fee waiver for Purple Heart recipients, and recipients of superior combat decorations, covers 110 percent of the credit hours the recipient needs to complete the applicable degree or certificate program.[17]

U.S. Department of Veterans Affairs Education Benefit Programs

The USDVA provides financial assistance to eligible veterans and dependents pursuing postsecondary education. The educational assistance programs administered by the USDVA are addressed below.

Post-9/11 GI Bill

The Post-9/11 GI Bill[18] is the newest educational assistance program that provides financial support for education and housing to individuals with at least 90 days of aggregate active duty service on or after September 11, 2001, or individuals discharged with a service-connected disability after 30 continuous days of active duty service. Individuals may be eligible for up to 36 months of education benefits and eligibility generally expires 15 years from the date of the last discharge or release from active duty service.

[12] Chapter 2014-1, Laws of Fla.
[13] Section. 1009.26(13)(a), F.S.
[14] Final data is not yet available from the respective institutions on the number of veteran fee waivers granted under s. 1009.26(13), F.S. Preliminary data from the FCS shows that 721 fee waivers were awarded as of February 4, 2015, for the 2014-2015 academic year. This preliminary data is subject to change upon final submission of waiver data from the respective FCS institutions. FCS data provided via e-mail by FCS staff on February 12, 2015. E-mail on file with Military and Veterans Affairs, Space, and Domestic Security Committee.
[15] Section 1009.26(8), F.S.
[16] Section 1009.26(8)(a)-(c), F.S.
[17] Section 1009.26(8), F.S.
[18] 38 U.S.C. §§3301-3325.

The Post-9/11 GI Bill provides beneficiaries the cost of tuition and fees, not to exceed the most expensive in-state undergraduate tuition at a public higher education institution in the state in which the individual is attending school. The tuition and fees payment is paid directly to the school on behalf of the student and is prorated by the student's benefit level.[19] Post-9/11 GI Bill benefits may be used for approved training, which includes: graduate and undergraduate degrees, non-college degree programs for vocational and technical training, apprenticeship and on-the-job training, flight training, correspondence training, certification and licensing, national testing programs, entrepreneurship training, and a tutorial assistance program.

An individual is eligible for a fixed percentage of the payments authorized under the Post-9/11 GI Bill based on the individual's amount of creditable active duty service since September 11, 2001. The table below describes the maximum benefit payable for the applicable length of an individual's active duty service.

Post-9/11 GI Bill Service Requirements[20] (Aggregate active duty service after Sept. 10, 2001)	**Percentage of Maximum Benefit Payable**
At least 36 months	100
At least 30 continuous days on active duty (must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months	90
At least 24 months, but less than 30 months	80
At least 18 months, but less than 24 months	70
At least 12 months, but less than 18 months	60
At least 6 months, but less than 12 months	50
At least 90 days, but less than 6 months	40

Post-9/11 GI Bill Transferability[21]

A servicemember may transfer all or some of their unused Post-9/11 GI Bill benefits to their spouse or children. Transfer requests are submitted and approved while the servicemember is in the military. The servicemember must have at least six years of service and commit to an additional four years of service in order to transfer benefits to a spouse or child. An eligible servicemember may transfer up to the total months of unused Post-9/11 GI Bill benefits, or the entire 36 months if the member has used none.

A spouse may start to use the benefit immediately upon transfer, while the servicemember remains in the military or after separation. A spouse may use transferred Post-9/11 GI Bill benefits for up to 15 years after the servicemember's last separation from active duty service. A child may start to use the benefit only after the transferor has completed at least 10 years of military service. This may be while the servicemember remains in the military or after

[19] Post-9/11 GI Bill students are also entitled to a monthly housing allowance and an annual books and supplies stipend paid directly to the student, both prorated by the student's length of service percentage. The housing allowance is equal to the Department of Defense's Basic Allowance for Housing for an "E-5 with dependents" and the zip code of the school. The books and supplies stipend is based on the number of credit hours taken and may not exceed $1,000 per academic year.
[20] USDVA Pamphlet 22-09-01 RE: Post-9/11 GI Bill. May 2012. Available at: http://www.benefits.va.gov/gibill/docs/pamphlets/ch33_pamphlet.pdf
[21] 38 U.S.C.§ 3319.

separation. A child is no longer eligible for the transferred benefits after reaching 26 years of age.

Marine Gunnery Sergeant John David Fry Scholarship[22]

The Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) entitles the surviving spouse[23] and children of a servicemember who died in the line of duty after September 10, 2001, to Post-9/11 GI Bill benefits. The Fry Scholarship pays eligible dependents 36 months of the full, 100 percent level, of the Post-9/11 GI Bill. This includes the tuition and fee payment, a monthly housing allowance, and a books and supplies stipend. A child's Fry Scholarship eligibility ends on their 33rd birthday and a spouse loses eligibility upon remarriage.

During fiscal year 2013, there were 63,947 Post-9/11 GI Bill beneficiaries enrolled in a higher education institution in Florida.[24]

Montgomery GI Bill – Active Duty

The Montgomery GI Bill-Active Duty (MGIB-AD)[25] generally applies to veterans who began active duty service for the first time after June 30, 1985, had their pay reduced by $100 a month for 12 months, and received an honorable discharge. Assistance may be used for college degree and certificate programs, technical or vocational courses, flight training, apprenticeships or on-the-job training, high-tech training, licensing and certification tests, entrepreneurship training, certain entrance examinations, and correspondence courses. MGIB-AD benefits are paid on a monthly basis directly to the veteran. The monthly benefit amount depends on several factors including length of service and the type of training pursued. The current monthly rate for a veteran who completed an enlistment of 3 years or more who is pursuing a full time college degree or certificate is $1,717.[26] A veteran may be eligible for up to 36 months of benefits and must use the benefit within 10 years of the veteran's last discharge. During fiscal year 2013, there were 6,530 MGIB-AD beneficiaries enrolled in a higher education institution in Florida.[27]

Montgomery GI Bill – Selected Reserve

The Montgomery GI Bill – Selected Reserve program (MGIB-SR)[28] provides educational assistance to members actively participating in the Selected Reserve.[29] Reservists must be actively drilling and have a 6-year obligation in the reserves to be eligible.[30] Assistance may be

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[22] 38 U.S.C.§ 3311(b)(9).
[23] Public Law 113-146, Title VII, Section 701, The Veterans Access, Choice, and Accountability Act of 2014, expanded eligibility for the Fry Scholarship to surviving spouses effective January 1, 2015.
[24] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[25] 38 U.S.C. §§3001-3035.
[26] USDVA website. MGIB-AD Rates Effective October 1, 2014. Available at: http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch30/ch30rates100114.asp.
[27] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[28] 10 U.S.C. §§16131-16136.
[29] Selected Reserve components include the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, Coast Guard Reserve, Army National Guard, and Air Force National Guard.
[30] 10 U.S.C. §§16131(a), 16132(a); Department of Veterans Affairs, *The Montgomery GI Bill-Selected Reserve*, http://gibill.va.gov/documents/pamphlets/ch1606_pamphlet.pdf.

used for college degree and certificate programs, co-op training, technical or vocational courses, flight training, apprenticeships or on-the-job training, high-tech training, licensing and certification tests, entrepreneurship training, certain entrance examinations, and correspondence courses. A reservist may qualify for up to 36 months of MGIB-SR benefits, in which benefits are paid on a monthly basis directly to the reservist. The current monthly rate payable to a qualifying reservist for a full time degree or certificate program is $367.[31] During fiscal year 2013, there were 2,575 MGIB-SR beneficiaries enrolled in a higher education institution in Florida.[32]

Survivors' and Dependents' Educational Assistance

Survivors' and Dependents' Educational Assistance program (DEA)[33] is the USDVA benefit program designed for the spouse and children of a veteran who has a service-connected permanent and total disability, died as a result of service, or is listed as Missing in Action or as a Prisoner of War.***[34]*** Benefits may be used for degree and certificate programs, apprenticeship, and on-the-job training with a maximum entitlement of 45 months. Children are eligible for DEA until age 26. Spouses are generally eligible for DEA for 10 years from the date the USDVA finds the spouse eligible or the date of the death of the veteran, or 20 years in certain circumstances. The current monthly rate payable to a qualifying spouse or child for a full time degree or certificate program is $1,018.[35] During fiscal year 2013, there were 6,770 DEA beneficiaries enrolled in a higher education institution in Florida.[36]

Reserve Educational Assistance Program

Reserve Educational Assistance Program (REAP)[37] provides educational assistance to National Guard members and reservists who are called to active duty in response to a war, national emergency, or contingency operation as declared by the President or Congress on or after September 11, 2001, for a minimum of 90 consecutive days.[38] Maximum full-time entitlement is 36 months. Monthly benefit payments are made directly to a qualified National Guard member or reservist. The benefit rate is a portion of the MGIB-AD three-year enlistment rate. The current monthly rate payable for a full time degree or certificate program for a National Guard member or reservist with at least 90 consecutive days of service, but less than one year is $686.80.[39] During fiscal year 2013, there were 615 REAP beneficiaries enrolled in a higher education institution in Florida.[40]

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[31] USDVA website. MGIB-SR Rates Effective October 1, 2014. Available at: http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch1606/ch1606rates100114.asp
[32] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[33] 38 U.S.C. §§3500-3566.
[34] 38 U.S.C. §3501(a)(1).
[35] USDVA website. REAP Rates Effective October 1, 2014. Available at: http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch35/ch35rates100114.asp
[36] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[37] 10 U.S.C. §§16161-16166.
[38] 10 U.S.C. §16163(a).
[39] USDVA website. REAP Rates Effective October 1, 2014. Available at: http://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch1607/ch1607rates100114.asp
[40] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp

Veterans Educational Assistance Program

The Veterans Educational Assistance Program (VEAP)[41]is an education benefit for veterans who entered service for the first time between December 31, 1976, and July 1, 1985. Although there are still some veterans who use this program, it ended for new enrollees June 30, 1985. During fiscal year 2013, there were 2 VEAP beneficiaries enrolled in a higher education institution in Florida.[42]

The chart below shows the number of Florida beneficiaries for each USDVA education program for fiscal year 2011 through 2013.[43]

Fiscal Year	Total Beneficiaries	USDVA Educational Assistance Program					
		Post-9/11	MGIB-AD	MGIB-SR	DEA	VEAP	REAP
2011	68,133	42,607	14,608	3,020	6,810	7	1,081
2012	62,911	42,607	9,454	2,613	6,513	5	818
2013	87,140	63,947	6,530	2,575	6,770	2	615

The Veterans Access, Choice, and Accountability Act of 2014

The Veterans Access, Choice, and Accountability Act of 2014 (Choice Act)[44] was signed into law in August 2014 as a federal, bipartisan response to the health care access issues facing the USDVA. The Choice Act provides new authorities, funding, and other tools to help support and reform the USDVA. Among the provisions relating to veterans' access to healthcare, the Choice Act addresses tuition rates at public higher education institutions for recently separated veterans and their dependents.[45] Specifically, the Choice Act requires the USDVA to disapprove programs of education for payment of benefits under the Post-9/11 GI Bill and the Montgomery GI Bill-AD at public institutions if the schools charge qualifying veterans and dependents tuition and fees in excess of the rate for resident students for the terms beginning after July 1, 2015. The USDVA will not issue payments for any students eligible for the Post-9/11 GI Bill or the Montgomery GI Bill-AD until a school becomes fully compliant.[46] The Choice Act requirements apply only to qualifying students using either the Post-9/11 GI Bill or the Montgomery GI Bill-AD. Institutions are not required to change tuition rate policy for individuals using other USDVA educational benefits.

Post-9/11 GI Bill and Montgomery GI Bill-AD beneficiaries who are entitled to in-state tuition rates at public institutions pursuant to the Choice Act include:

[41] 38 U.S.C. §§3201-3243.
[42] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[43] National Center for Veterans Analysis and Statistics. Utilization Report on Department of Veterans Affairs Education Program Beneficiaries by Geography: FY 2000 to FY 2013. Available at: http://www.va.gov/vetdata/Utilization.asp
[44] Public Law 113-146.
[45] Public Law 113-146, Title VII, Section 702.
[46] USDVA summary of Section 702 of the Veterans Access, Choice and Accountability Act of 2014. Available at: http://www.benefits.va.gov/GIBILL/docs/factsheets/Section_702_Factsheet.pdf

- A veteran who lives in the state in which the institution of higher learning is located, regardless of the veteran's formal state of residence, and enrolls in the school within 3 years of discharge from a period of active duty service of 90 days or more; or
- A spouse or child using transferred benefits who lives in the state in which the institution of higher learning is located, regardless of the student's formal state of residence, and enrolls in the school within 3 years of the transferor's discharge from a period of active duty service of 90 days or more; or
- A spouse or child using benefits under the Marine Gunnery Sergeant John Dave Fry Scholarship who lives in the state in which the institution of higher learning is located, regardless of the student's formal state of residence, and enrolls in the school within 3 years of the servicemember's death in the line of duty following a period of active duty service of 90 days or more.

An individual who meets the initial requirements above will remain eligible for in-state tuition rates under the Choice Act provided that the individual remains continuously enrolled at the same institution of higher learning once the 3 year date of discharge has passed and continues to use either Post-9/11 GI Bill or the Montgomery GI Bill-AD benefits.

III. Effect of Proposed Changes:

The bill amends s. 1009.26(13), F.S., to allow additional persons to be eligible for the out-of-state tuition fee waiver currently afforded to honorably discharged veterans residing in Florida and enrolled in a state university, Florida College System institution, career center operated by a school district, or charter technical career center. The bill requires a state university, Florida College System institution, career center operated by a school district, or charter technical career center to waive out-of-state fees for any person who is entitled to and uses educational assistance through the U.S. Department of Veterans Affairs for a quarter, semester, or term beginning after July 1, 2015, and physically resides in Florida while enrolled in the institution. This addition allows individuals, such as a spouse or child of a veteran or servicemember using GI Bill benefits, to qualify for in-state tuition rates. The Board of Governors and the State Board of Education are required to adopt regulations and rules, respectively, to administer the out-of-state fee waivers in s. 1009.26(13).

The bill also repeals the statutory provision that limits the out-of-state fee waiver for honorably discharged veterans to 110 percent of the required credit hours of a degree or certificate program.

The bill provides that it will take 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:

Non-resident students using GI Bill educational benefits who qualify for the out-of-state fee waiver under SB 7028 would only pay in-state tuition and fee rates. This would provide a considerable savings to those students each semester.

For the 2014-2015 academic year, the average State University System undergraduate cost for tuition and fees for two semesters is $5,934 for residents and $20,625 for non-residents. At the graduate level, the average cost for two semesters is $10,397 for residents and $25,372 for non-residents.[47] For the same period, the Florida College System reports the average cost for two semesters is approximately $3,156 for residents enrolled in lower-level credit programs and $11,605 for non-residents. For residents enrolled in the upper-level credit programs the cost for two semesters is $3,610 and $15,393 for non-residents.[48] For district technical centers, the average cost for two semesters is $2,502 for residents and $10,053 for non-residents.[49]

C. Government Sector Impact:

Based on 2013-14 data from the Board of Governors on full-time equivalent students using educational assistance benefits through the USDVA, the estimated fiscal impact of the bill on the State University System for one year is $1,608,419 in unrealized tuition revenue. This estimate is based on the assumption that a veteran's dependents would enroll in 30 credit hours per year.[50] According to the Department of Education, the estimated fiscal impact is $856,939 in unrealized tuition revenue for the Florida College System.[51] The fiscal impact would be insignificant for district career centers based on current enrollment.[52]

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[47] Florida Board of Governors website. 2014-2015 Tuition and Fees Excel database. Available at: http://www.flbog.edu/about/budget/current.php

[48] E-mail correspondence with Florida College System staff. February 13, 2015. On file with Military and Veterans Affairs, Space, and Domestic Security Staff.

[49] Telephone conversation with the Florida Department of Education Office of Career and Adult Education. February 25, 2015.

[50] E-mail correspondence with Board of Governors of the State University System of Florida staff. February 13, 2015. On file with Military and Veterans Affairs, Space, and Domestic Security Committee.

[51] E-mail correspondence with Department of Education staff. March 2, 2015. On file with Appropriations Subcommittee on Education staff.

[52] Telephone conversation with staff, Florida Department of Education. March 2, 2015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.26 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.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security

583-01647-15 20157028__

A bill to be entitled

An act relating to educational opportunities for veterans; amending s. 1009.26, F.S.; revising criteria for eligibility for out-of-state fee waivers at state universities, Florida College System institutions, and specified career centers; removing a provision regarding the applicability of waivers to required credit hours for a student's degree or certificate program; requiring the Board of Governors and the State Board of Education to adopt regulations and rules, respectively; revising a short title provision; providing an effective date.

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

Section 1. Subsection (13) of section 1009.26, Florida Statutes, is amended to read:

1009.26 Fee waivers.—

(13)(a) There is established the Congressman C. W. "Bill" Young Veteran Tuition Waiver Program. A state university, Florida College System institution, career center operated by a school district under s. 1001.44, or charter technical career center shall waive out-of-state fees for a person who is:

1. An honorably discharged veteran of the United States Armed Forces, the United States Reserve Forces, or the National Guard who physically resides in this state while enrolled in the institution; or.

2. Entitled to and uses educational assistance provided by the United States Department of Veterans Affairs for a quarter, semester, or term beginning after July 1, 2015, who physically resides in this state while enrolled in the institution.

(b) Tuition and fees charged to a student ~~veteran~~ who qualifies for the out-of-state fee waiver under this subsection may not exceed the tuition and fees charged to a resident student. ~~The waiver is applicable for 110 percent of the required credit hours of the degree or certificate program for which the student is enrolled.~~

(c) Each state university, Florida College System institution, career center operated by a school district under s. 1001.44, and charter technical career center shall report to the Board of Governors and the State Board of Education, respectively, the number and value of all fee waivers granted annually under this subsection.

(d) The Board of Governors and the State Board of Education shall respectively adopt regulations and rules to administer this subsection.

(e) ~~(b)~~ This subsection may be cited as the "Congressman C.W. 'Bill' Young Veteran Tuition Waiver Act."

Section 2. This act shall take effect upon becoming a law.

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)

4/9/2015
Meeting Date

SB 7028
Bill Number (if applicable)

Topic Educational Opportunities for Veterans

Amendment Barcode (if applicable)

Name Colleen Krepstekies (krep-steck-keys)

Job Title Legislative & Cabinet Affairs Director

Address Suite 2105, The Capitol
Street

Phone (850) 487-1533

Tallahassee FL 32399
City *State* *Zip*

Email krepstekiesc@fdva.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Dept. of Veterans' Affairs

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:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

April 6, 2015

The Honorable Tom Lee
Chair, Senate Appropriations Committee
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Lee:

I respectfully request that I be excused from the Senate Appropriations Committee meeting on April 9, 2015. I unfortunately have a longstanding civic commitment and will not be able to attend the meeting.

Thank you for your consideration.

Sincerely,

Jack Latvala

Jack Latvala
Senator, District 20

Cc: Cindy Kynoch, Staff Director; Alicia Weiss, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/9/2015 1:10:32 PM
Ends: 4/9/2015 3:50:21 PM Length: 02:39:50

1:10:34 PM Sen. Lee (Chair)
1:11:57 PM Sen. Montford
1:13:25 PM Sen. Lee
1:13:27 PM S 340
1:13:32 PM Sen. Grimsley
1:14:00 PM Sen. Lee
1:14:03 PM Am. 550380
1:14:10 PM Sen. Grimsley
1:14:17 PM Sen. Lee
1:15:30 PM S 420
1:15:33 PM Sen. Grimsley
1:16:07 PM Sen. Lee
1:16:30 PM Am. 656866
1:16:56 PM Sen. Grimsley
1:17:03 PM Sen. Lee
1:17:06 PM Sen. Grimsley
1:17:12 PM Sen. Lee
1:17:14 PM Sen. Grimsley
1:17:22 PM Sen. Lee
1:17:31 PM S 420 (cont.)
1:17:40 PM Diana Ferguson, Attorney, Florida Animal Control Association (waives in support)
1:17:49 PM Sen. Lee
1:18:38 PM S 682
1:18:55 PM PCS 582684
1:19:07 PM Sen. Grimsley
1:19:46 PM Sen. Lee
1:20:25 PM Sylvia Smith, Directory of Public Policy, Disability Rights of Florida (waives in support)
1:23:11 PM
1:23:23 PM Sen. Lee
1:23:58 PM S 326 (cont.)
1:24:08 PM Casey Cook, Legislative Advocate, Florida League of Cities (waives in support)
1:24:15 PM Susan Harbin, Florida Association of Counties (waives in support)
1:24:17 PM Albert Balido, Florida Certification Board (waives in support)
1:24:25 PM Mat Forrest, City of Delray Beach (waives in support)
1:24:31 PM Candice Ericks, Palm Beach County (waives in support)
1:24:36 PM Jordan Connors, City of Port St. Lucie (waives in support)
1:24:41 PM Sen. Lee
1:25:30 PM S 278
1:25:34 PM Sen. Diaz de la Portilla
1:26:31 PM Am. 434210
1:26:41 PM Sen. Lee
1:26:57 PM Sen. Diaz de la Portilla
1:28:23 PM Sen. Lee
1:28:31 PM Am. 371462
1:28:38 PM Sen. Margolis
1:31:41 PM Sen. Lee
1:31:42 PM Am. 478892
1:32:13 PM Javier Betancourt, Deputy Director, Miami DDA (waives in objection)
1:33:29 PM Sen. Gaetz
1:34:09 PM J. Betancourt
1:34:11 PM Sen. Gaetz
1:34:19 PM J. Betancourt

1:34:20 PM Sen. Gaetz
1:34:23 PM Sen. Lee
1:34:42 PM Sen. Diaz de la Portilla
1:38:04 PM Sen. Lee
1:38:11 PM Sen. Margolis
1:40:38 PM Sen. Lee
1:41:26 PM Sen. Hukill
1:41:42 PM Sen. Lee
1:41:53 PM Sen. Diaz de la Portilla
1:45:57 PM Sen. Negron
1:46:23 PM Sen. Diaz del la Portilla
1:46:33 PM Sen. Lee
1:46:40 PM Sen. Margolis
1:47:07 PM Sen. Lee
1:47:30 PM Sen. Margolis
1:47:34 PM Sen. Lee
1:48:44 PM Sen. Margolis
1:48:52 PM Sen. Lee
1:49:16 PM Am. 434210
1:49:21 PM Sen. Lee
1:49:29 PM S 278 (cont.)
1:50:11 PM Brian Pitts, Trustee, Justice 2 Jesus
1:52:04 PM Sen. Lee
1:53:15 PM S 216
1:53:22 PM Sen. Bradley
1:55:16 PM Sen. Lee
1:55:24 PM Am. 632724
1:55:39 PM Sen. Bradley
1:55:48 PM
1:55:52 PM Sen. Lee
1:55:54 PM Rocco Salvatori, Firefighter, Florida Professional Firefighters (waives in support)
1:56:06 PM S 216 (cont.)
1:56:13 PM Kraig Conn, Florida League of Cities (waives in support)
1:56:31 PM Yeline Goin, Attorney, City of Cope Coral (waives in support)
1:56:39 PM Rocco Salvatori, Firefighter, Florida Professional Firefighters (waives in support)
1:56:46 PM Brian Pitts, Trustee, Justice 2 Jesus
1:58:34 PM Sen. Lee
1:59:41 PM S 242
1:59:51 PM Sen. Brandes
2:00:34 PM Sen. Lee
2:00:46 PM Kraig Coon, Florida League of Cities
2:01:06 PM Sen. Lee
2:01:08 PM K. Coon
2:01:10 PM Sen. Lee
2:01:22 PM K. Coon
2:02:34 PM Sen. Lee
2:03:02 PM K. Coon
2:03:07 PM Sen. Lee
2:03:12 PM K. Coon
2:03:47 PM Sen. Brandes
2:05:20 PM Sen. Lee
2:06:35 PM S 1054
2:07:03 PM Sen. Evers
2:07:14 PM Sen. Lee
2:07:21 PM Chris Hanson, Association of Florida Colleges (waives is support)
2:07:35 PM Stephen Schroeder, General Counsel and Executive Director of Government Affairs, Pasco Hernando State College (waives in support)
2:07:41 PM Brittany Dover, Deputy Legislative Affairs, Department of Environmental Protection (waives in support)
2:07:52 PM Andrew Ruteledge, Legislative Affairs Director, Northwest Florida Water Management District (waives in support)
2:08:51 PM Sen. Lee
2:09:00 PM S 1114

2:09:07 PM Sen. Stargel
2:09:58 PM Sen. Lee
2:10:04 PM Sen. Montford
2:13:30 PM Sen. Stargel
2:13:33 PM Sen. Montford
2:13:57 PM Sen. Stargel
2:14:25 PM Sen. Smith
2:15:08 PM Sen. Stargel
2:15:34 PM Sen. Smith
2:15:40 PM Sen. Stargel
2:15:51 PM Sen. Margolis
2:16:11 PM Sen. Stargel
2:16:26 PM Sen. Lee
2:16:27 PM Sen. Margolis
2:17:06 PM Sen. Stargel
2:17:53 PM Sen. Joyner
2:18:27 PM Sen. Stargel
2:18:40 PM Sen. Joyner
2:18:43 PM Sen. Stargel
2:18:51 PM Sen. Joyner
2:19:38 PM Sen. Stargel
2:20:11 PM Sen. Joyner
2:20:31 PM Sen. Stargel
2:20:40 PM Sen. Joyner
2:21:41 PM Sen. Stargel
2:22:00 PM Sen. Gaetz
2:23:12 PM Sen. Stargel
2:23:56 PM Sen. Montford
2:24:21 PM Sen. Stargel
2:24:52 PM Sen. Montford
2:25:07 PM Sen. Stargel
2:25:11 PM Sen. Montford
2:25:16 PM Sen. Stargel
2:25:50 PM Sen. Montford
2:26:55 PM Sen. Stargel
2:27:40 PM Sen. Montford
2:28:21 PM Sen. Stargel
2:28:44 PM Sen. Lee
2:28:49 PM Sen. Margolis
2:29:30 PM Sen. Stargel
2:29:41 PM Sen. Margolis
2:29:45 PM Sen. Stargel
2:29:51 PM Sen. Margolis
2:29:59 PM Sen. Stargel
2:30:17 PM Sen. Lee
2:30:35 PM Brian Pitts, Trustee, Justice 2 Jesus
2:34:34 PM Sen. Lee
2:35:16 PM Sen. Montford
2:37:17 PM Sen. Altman
2:38:45 PM Sen. Margolis
2:39:58 PM Sen. Lee
2:40:01 PM Sen. Smith
2:42:20 PM Sen. Joyner
2:45:48 PM Sen. Gaetz
2:47:50 PM Sen. Lee
2:47:52 PM Sen. Simmons
2:48:28 PM Sen. Lee
2:48:37 PM Sen. Stargel
2:49:48 PM Sen. Lee
2:50:35 PM Sen. Stargel
2:50:57 PM Sen. Lee
2:51:25 PM S 7018

2:51:26 PM Sen. Sobel
2:52:39 PM Sen. Lee
2:52:51 PM PCS 906328
2:53:12 PM Zayne Smith, ASD, AARP (waives in support)
2:53:22 PM Brian Pitts, Trustee, Justice 2 Jesus
2:54:48 PM Sen. Lee
2:55:02 PM Sen. Sobel
2:55:15 PM Sen. Lee
2:56:11 PM S 728
2:56:35 PM Sen. Benacquisto
2:57:22 PM Sen. Lee
2:58:22 PM Stephen R. Winn, Executive Director, Florida Osteopathic Medical Association
2:58:32 PM Chris Nuland, Florida Public Health Association and Florida Chapter of American Colleges of Physicians (waives in support)
2:58:44 PM Heather Youmans, Government Relations Director, American Cancer Society Cancer Action Network, Inc. (waives in support)
2:58:50 PM Jill Gran, Florida Alcohol and Drug Abuse Association (waives in support)
2:59:11 PM Sen. Benacquisto
2:59:13 PM Sen. Lee
2:59:57 PM Sen. Benacquisto
3:00:01 PM S 686
3:00:07 PM Sen. Lee
3:03:31 PM Sen. Benacquisto
3:03:35 PM Brian Pitts, Trustee, Justice 2 Jesus
3:05:11 PM Sen. Lee
3:05:14 PM Sen. Benacquisto
3:06:01 PM S 606
3:06:06 PM Sen. Gaetz
3:07:18 PM Sen. Benacquisto
3:07:25 PM PCS 161922
3:07:40 PM Am. 351206
3:07:46 PM Sen. Gaetz
3:07:51 PM Sen. Benacquisto
3:07:58 PM S 606 (cont.)
3:08:29 PM Brian Pitts, Trustee, Justice 2 Jesus
3:09:34 PM Sen. Benacquisto
3:09:39 PM JoeAnne Hart, Director of Government Affairs, Florida Dental Association (waives in support)
3:09:49 PM Sen. Benacquisto
3:10:29 PM S 836
3:10:46 PM Brenda Johnson, Legislative Assistant to Sen. Latvala
3:12:11 PM Sen. Benacquisto
3:13:02 PM S 534
3:13:09 PM Tracy Caddell, Legislative Assistant to Sen. Latvala
3:13:58 PM Sen. Benacquisto
3:14:03 PM Justin Day, Director, More Too Life (waives in support)
3:14:11 PM Rebecca DelaRosa, Junior Leagues of Florida (waives in support)
3:14:17 PM Barney Bishop, President and CEO, Florida Smart Justice Alliance (waives in support)
3:14:21 PM Amy Datz, Legislative Liaison, National Council of Jewish Women
3:15:29 PM Barbara DeVane, Florida National Organization of Women (waives in support)
3:15:39 PM Sen. Benacquisto
3:16:27 PM S 766
3:16:36 PM Sen. Hukill
3:17:45 PM Sen. Benacquisto
3:17:46 PM Am. 856265
3:17:51 PM Sen. Hukill
3:18:16 PM Sen. Benacquisto
3:18:30 PM S 766 (cont.)
3:18:36 PM Dan Peterson, Director Center for Property Rights, James Madison Institute
3:18:58 PM Sen. Benacquisto
3:19:56 PM PCS 164078
3:20:02 PM Sen. Garcia
3:20:13 PM Sen. Benacquisto

3:20:16 PM Am. 348118
3:20:27 PM Sen. Garcia
3:20:34 PM Sen. Benacquisto
3:20:45 PM S 818 (cont.)
3:20:53 PM Bob Nave, Vice President for Research, Florida TaxWatch
3:20:59 PM Nikki Fried, Broward County School Board (waives in support)
3:21:06 PM Iraida Mendez-Cartaya, Association of Superintendent, Miami Dade County Public Schools (waives in support)
3:21:09 PM John Sullivan, Legislative Liaison, Duval County Public Schools (waives in support)
3:21:21 PM Sen. Benacquisto
3:22:09 PM S 7028
3:22:19 PM Sen. Altman
3:22:59 PM Sen. Benacquisto
3:23:08 PM Colleen Krepstekies, Legislative and Cabinet Affairs Director, The Florida Department of Veteran Affairs (waives in support)
3:23:59 PM S 1050
3:24:05 PM PCS 437900
3:24:12 PM Sen. Montford
3:24:53 PM Sen. Benacquisto
3:24:57 PM Am. 852090
3:25:06 PM Sen. Montford
3:25:11 PM Sen. Benacquisto
3:25:17 PM Am. 565886
3:25:22 PM Sen. Montford
3:25:39 PM Sen. Benacquisto
3:25:53 PM S 1050 (cont.)
3:27:00 PM S 266
3:27:03 PM Sen. Ring
3:27:26 PM Sen. Benacquisto
3:27:31 PM Martha Cleaver, Lobbyist, Florida Association of Property Appraisers (waives in support)
3:27:42 PM Sen. Benacquisto
3:28:36 PM S 1298
3:28:39 PM Sen. Simmons
3:33:23 PM Sen. Benacquisto
3:33:26 PM Am. 363694
3:34:14 PM Sen. Benacquisto
3:34:25 PM Am. 707796
3:34:35 PM Sen. Simmons
3:35:28 PM Sen. Benacquisto
3:35:37 PM Roger Chapin, Vice President, MEARS Transportation (waives in support)
3:35:46 PM
3:35:46 PM Larry Williams, Attorney, MEARS Transportation (waives in support)
3:35:49 PM Louis Minardi, President, Florida Taxicab Association (waives in support)
3:35:51 PM Angus Murray, Key Transportation and Miami Springs Tax (waives in support)
3:35:54 PM Jerry Mostowtz (waives in support)
3:36:00 PM Diego Feliciano, South Florida Taxicab Association (waives in support)
3:36:07 PM Robert Rios (waives in support)
3:36:14 PM Frank Hernandez (waives in support)
3:36:20 PM Floyd Webb, Manager, Yellow Cab Tallahassee (waives in support)
3:36:29 PM Kenneth Pratt, Florida Bankers Association (waives in support)
3:36:37 PM
3:37:42 PM Cesar Fernandez, Public Policy Associate, Uber Technologies
3:40:18 PM Sen. Benacquisto
3:40:22 PM Gerald Wester, American Insurance Association
3:43:46 PM Katie Webb, Property Casualty Insurance Association of America
3:44:41 PM S 1298 (cont.)
3:44:49 PM Sen. Altman
3:45:00 PM Sen. Simmons
3:45:10 PM Sen. Gaetz
3:45:43 PM Sen. Benacquisto
3:45:48 PM Sen. Simmons
3:47:31 PM Sen. Benacquisto

3:48:40 PM Sen. Galvano
3:48:44 PM Sen. Garcia
3:48:48 PM Sen. Negron
3:49:01 PM Sen. Flores
3:49:18 PM Sen. Smith
3:49:31 PM Sen. Gaetz
3:49:44 PM Sen. Richter
3:50:06 PM Sen. Benacquisto