

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Thompson, Vice Chair

MEETING DATE: Wednesday, March 19, 2014
TIME: 11:00 a.m.—12:30 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1634 Commerce and Tourism (Compare H 611, H 7023, S 1116)	Department of Economic Opportunity; Requiring each county and municipality to adopt and enforce land development regulations in accordance with the submitted comprehensive plan; revising legislative intent for purposes of the Florida Small Cities Community Development Block Grant Program; requiring the Department of Economic Opportunity to adopt rules establishing a competitive selection process for loan guarantees and grants awarded under the block grant program; deleting the requirement that an unemployed individual take an initial skill review before he or she is eligible to receive reemployment assistance benefits, etc. CA 03/19/2014 Favorable MS AP	Favorable Yeas 9 Nays 0
2	SB 1318 Evers (Compare CS/H 1051)	Public Records/Public-private Partnerships; Amending provisions relating to public-private partnerships for the upgrade of public facilities and infrastructure; providing an exemption from public records requirements for unsolicited proposals held by a responsible public entity for a specified period; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CA 03/19/2014 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0

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Community Affairs

Wednesday, March 19, 2014, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 582 Children, Families, and Elder Affairs / Clemens (Similar H 479)	Substance Abuse Services; Prohibiting a sober house transitional living home from operating in this state without a valid certificate of registration from the Department of Children and Families; requiring a sober house operator to annually apply for a certificate of registration with the department; requiring certain sober house transitional living homes to apply for a certificate of registration by a specified date; requiring the department to adopt rules pertaining to the application process for obtaining a certificate of registration, etc. CF 02/11/2014 Fav/CS CA 03/19/2014 Favorable AP	Favorable Yeas 9 Nays 0
4	SB 340 Flores	Prepaid Dental Plans; Postponing the scheduled repeal of a provision requiring the Agency for Health Care Administration to contract with dental plans for dental services on a prepaid or fixed-sum basis; authorizing the agency to provide a prepaid dental health program in Miami-Dade County on a permanent basis; requiring an annual report to the Governor and Legislature; authorizing the agency to seek any necessary revisions to the state plan or federal waivers, etc. HP 01/08/2014 Favorable CA 03/19/2014 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
5	SB 1102 Altman (Identical H 987)	Local Government Infrastructure Surtax; Authorizing the use of the surtax for the restoration or maintenance of natural water bodies for public use, etc. CA 03/19/2014 Favorable AFT AP	Favorable Yeas 8 Nays 1

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6	CS/SB 612 Governmental Oversight and Accountability / Hays (Compare H 801)	Government Contracting; Expanding provisions that require an agency, university, college, school district, or other political subdivision of the state to provide preferential consideration to a Florida business in awarding competitively bid contracts to purchase personal property to include the purchase of construction services; requiring counties and municipalities to provide such preferential consideration; requiring agencies to provide the Department of Management Services with copies of vendor complaints and names of suspended and terminated vendors, etc. GO 03/06/2014 Fav/CS CA 03/19/2014 Fav/CS JU AP	Fav/CS Yeas 9 Nays 0
7	SB 320 Sachs (Identical H 347)	Commercial Parasailing; Citing this act as the "White-Miskell Act"; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection, etc. RI 01/09/2014 Temporarily Postponed RI 02/13/2014 Favorable CM 03/10/2014 Favorable CA 03/19/2014 Favorable	Favorable Yeas 9 Nays 0
8	SB 786 Latvala (Similar H 723)	Discretionary Sales Surtaxes; Revising the uses of the proceeds of the local government infrastructure surtax to include the maintenance of transportation infrastructure; authorizing a county to levy a homeless services and facilities surtax; defining "homeless services" and "homeless facilities"; requiring an ordinance, referendum, and voter approval, etc. CF 03/04/2014 Favorable CA 03/19/2014 Fav/CS TR AP	Fav/CS Yeas 8 Nays 1

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1442 Bradley (Identical H 1189)	Publicly Funded Retirement Programs; Revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; providing that any municipal services taxing unit that provides fire protection services to another municipality under an interlocal agreement is eligible to receive property insurance premium taxes; requiring municipal services 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; authorizing a municipal services taxing unit, under certain conditions, to revoke its participation and cease to receive property insurance premium taxes, etc. CA 03/19/2014 Fav/CS GO AP	Fav/CS Yeas 9 Nays 0
10	SB 1106 Simpson (Compare CS/H 593)	Building Construction; Providing an additional method for local governments to provide notices to alleged code enforcement violators; requiring application for an operating permit before filing an application for a building permit for a public swimming pool or bathing place; specifying inspection criteria for construction or modification of manufactured buildings or modules, etc. CA 03/19/2014 Fav/CS HP RI AP	Fav/CS Yeas 8 Nays 1

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 Community Affairs

BILL: SB 1634

INTRODUCER: Commerce and Tourism Committee

SUBJECT: Department of Economic Opportunity

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	CM SPB 7058 as introduced
2.	Stearns	Yeatman	CA	Favorable
3.			MS	
4.			AP	

I. Summary:

SB 1634 modifies several activities under the jurisdiction of the Department of Economic Opportunity (DEO). The bill establishes requirements for the operation of all loan programs administered by the DEO to increase accountability and performance of loan programs under ch. 288, F.S.

The bill revises the Florida Small Cities Community Development Block Grant Act to streamline application procedures and competitive grant scoring criteria, grant rulemaking authority to the DEO, and streamline public hearing requirements.

The bill requires Space Florida to consult with Florida Tourism Industry Marketing Corporation rather than Enterprise Florida, Inc., in developing a space marketing plan. The requirement for the establishment of a Center for Excellence for Aerospace is repealed, but Space Florida will continue to promote research necessary to develop commercially promising, advanced, and innovative science and technology.

The bill repeals the requirement for reemployment assistance claimants to complete an initial skills review and requires the DEO to develop a voluntary online assessment to identify an individual's skills, abilities, and career aptitude. The DEO, through the regional workforce boards and one-stop centers, must offer services and training to individuals that are consistent with the results of the online assessment.

The bill implements changes to the Short Time Compensation program to conform to federal law, including requiring an employer to describe how its plan will be implemented, requiring an employer to treat the fringe benefits of participants the same as if he or she was not a participant, and prohibiting the DEO from denying benefits due to an individual's participation in certain training programs.

The bill extends the ability of employers to make quarterly contributions to the Unemployment Compensation Trust Fund, rather than a single, annual payment. This provision was set to sunset in 2014.

The bill rebrands “rural areas of critical economic concern” as “rural areas of opportunity.”

II. Present Situation:

Loan Programs Administered by the Department of Economic Opportunity

The DEO administers the following loan programs under ch. 288, F.S.:

- Rural Development Revolving Loan Program;
- Economic Gardening Business Loan Pilot Program; and
- Black Business Loan Program.

Rural Community Development Revolving Loan Program

The Rural Community Development Revolving Loan Program¹ provides long-term loans, loan guarantees, and loan loss reserves to units of local governments or economic development organizations substantially underwritten by a unit of local government. Applicants must be within a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, including those residing in incorporated areas and those residing in unincorporated areas of the county; or within a rural area of critical economic concern.²

Requests for loans must be made by application to the DEO and are made pursuant to agreements specifying the terms and conditions agreed to between the applicant and the DEO. All repayments of principal and interest must be returned to the loan fund and made available for loans to other applicants. However, upon approval by the DEO, in a rural area of critical economic concern repayments of principal and interest may be retained by the applicant if such repayments are dedicated and matched to fund regionally-based economic development organizations representing the rural area of critical economic concern.³

The DEO is directed to manage the fund and establish loan practices that include procedures for establishing loan interest rates, uses of funding, application procedures, and application review procedures. The DEO is granted the authority for the final approval for any loan under the program.⁴

¹ Section 288.065, F.S. *See also* DEO, Rural Revolving Loan Program, available at <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/economic-development/rural-revolving-loan-program> (last visited March 10, 2014).

² Section 288.065(2)(a), F.S. The term “rural area of critical economic concern” is defined in s. 288.0656(2)(d), F.S.

³ Section 288.065(2)(b) and (c), F.S.

⁴ Section 288.065(3), F.S.

Economic Gardening Business Loan Pilot Program

The Economic Gardening Business Loan Pilot Program⁵ provides low-interest, short-term loans to second-stage, high growth businesses. For eligibility in the loan program, a business must:⁶

- Be a for-profit, privately-held, investment-grade business that employs between 10 and 50 persons;
- Have maintained its principal place of business in Florida for at least the last two years;
- Generate between \$1 million and \$25 million in annual revenue;
- Be eligible for the Qualified Targeted Industry tax refund program pursuant to s. 288.106, F.S.;⁷ and
- Have experienced steady growth in its gross revenues and employment in at least three of the preceding five years.

The maximum amount of the loan available for receipt under the pilot program is \$250,000. The proceeds of the loan may be used for working capital purchases, employee training, or salaries for newly created jobs in the state. The loan period is 4 years.⁸

The DEO is authorized to designate one or more qualified entities to serve as loan administrators for the program. A loan administrator must be a Florida not-for-profit corporation that has its principal place of business in this state, and have at least 5 years of verifiable experience of lending to businesses in this state.⁹

The DEO, upon selection of a loan administrator, must enter into a grant agreement with the administrator to issue the available loans to eligible applicants. The grant agreement must specify the aggregate amount of the loans authorized for award by the loan administrator. The term of the grant agreement must be at least 4 years, except that the DEO may terminate the agreement earlier if the loan administrator fails to meet minimum performance standards set by the DEO. The grant agreement may be amended by mutual consent of both parties.¹⁰

A loan administrator is entitled to receive a loan origination fee, payable at closing, of 1 percent of each loan issued by the loan administrator and a servicing fee of 0.625 percent per annum of the loan's outstanding principal balance, payable monthly. During the first 12 months of the loan, the servicing fee must be paid from the disbursement from the Economic Development Trust Fund, and thereafter the loan administrator must collect the servicing fee from the payments made by the borrower, charging the fee against repayments of principal.¹¹

The loan administrator, after collecting the servicing fee, must remit the borrower's collected interest, principal payments, and charges for late payments to the DEO on a quarterly basis. If the borrower defaults on the loan, the loan administrator must initiate collection efforts to seek

⁵ Section 288.1081, F.S. See the DEO's website for more information about the pilot program and loans made, *available at* <http://floridajobs.org/news-center/reports-and-legislative-presentations> (last visited March 10, 2014).

⁶ Sections 288.1081(3)(a), F.S., and 288.1082(4)(a), F.S.

⁷ The qualified targeted industries are clean tech, life sciences, info tech, aviation/aerospace, homeland security/defense, and financial/professional services.

⁸ Section 288.1081(4), F.S.

⁹ Section 288.1081(5), F.S.

¹⁰ Section 288.1081(5)(b), F.S.

¹¹ Section 288.1081(5)(d), F.S.

repayment of the loan. Upon collecting payments for a defaulted loan, the loan administrator, must remit the payments to the DEO; but, to the extent authorized in the grant agreement, may deduct the costs of the administrator's collection efforts. The DEO must deposit all funds received under this provision into the General Revenue Fund.¹²

The loan administrator is required to submit quarterly reports to the DEO, which must include the information required in the grant agreement, which must include the number of full-time equivalent jobs created as a result of the loans, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the borrowers.¹³

The DEO contracted with the Black Business Investment Fund to administer the pilot program in 2009, and received an initial appropriation of \$8.5 million.¹⁴ No additional funds have been appropriated to the program.

The program expires July 1, 2016.¹⁵

Black Business Loan Program

Under the Black Business Loan Program,¹⁶ the DEO annually certifies entities to provide loans, loan guarantees, or investments to black business enterprises that cannot obtain capital through conventional lending institutions but that could otherwise compete successfully in the private sector.¹⁷

The program is subject to annual legislative appropriation. If the Black Business Loan Program is appropriated any funding in a fiscal year, the DEO must distribute an equal amount of the appropriation to each eligible entity, calculated as the total annual appropriation divided by the total number of eligible entities certified on or before July 31 of that fiscal year.¹⁸

An entity submitting an initial application for certification must demonstrate that it has:¹⁹

- A board of directors that includes citizens of the state experienced in the development of black business enterprises.
- A business plan that allows the recipient to operate in a manner consistent with the law and the DEO's rules for the program.
- The technical skills to analyze and evaluate applications by black business enterprises for loans, loan guarantees, or investments.
- Established viable partnerships with public and private funding sources, economic development agencies, and workforce development and job referral networks.

¹² Section 288.1081(5)(e), F.S.

¹³ Section 288.1081(5)(f), F.S.

¹⁴ Chapter 2009-1, L.O.F.

¹⁵ Section 288.1081(10), F.S.

¹⁶ Section 288.7102, F.S. *See also* DEO, Minority-Owned Business Assistance, Black Business Loan Program, available at <http://www.floridajobs.org/business-growth-and-partnerships/for-businesses-and-entrepreneurs/business-resources/minority-owned-business-assistance> (last visited March 10, 2014).

¹⁷ Section 288.7102(1), F.S.

¹⁸ Section 288.7102(3), F.S.

¹⁹ Section 288.7102(4)(c), F.S.

- The ability to provide a private match equal to 20 percent of the amount of funds provided by the DEO.

An eligible entity must be a corporation registered in this state. Existing certified entities must annually submit to the DEO a financial audit performed by an independent certified public accountant for the most recently completed fiscal year. The audit must not reveal any material weaknesses or instances of material noncompliance.²⁰

Both existing and new entities must agree to maintain the books and records relating to funds received by the DEO according to generally accepted accounting principles and in accordance with the requirements of the Single Audit Act.²¹ The entities must also agree to make those books and records available to the DEO for inspection upon reasonable notice.²²

Each eligible entity must meet the requirements of the loan program, the terms of the contract between the entity and the DEO, and any other applicable state or federal laws. An entity may not receive funds unless the entity meets annual certification requirements.²³

For Fiscal Year 2013-14, there are 6 certified entities and the amount appropriated was \$2.225 million.²⁴

Florida Small Cities Community Development Block Grant Program

The Community Development Block Grant (CDBG) Program is a federally funded housing and community development program that targets assistance to low and moderate income populations. Administered by the U.S. Department of Housing and Urban Development (HUD), the program provides annual grants on a formula basis to units of local government and states. Eligible program activities include housing rehabilitation and preservation, economic development, and water and sewer facilities construction. The Federal CDBG regulations set forth eligible activities and the national objectives that each activity must meet.²⁵ As recipients of CDBG funds, grantees are charged with ensuring that these requirements are met. States are given “maximum feasible deference” in the administration of the program.²⁶

Local governments in urban areas apply for and receive funds directly from HUD.²⁷ Rural or smaller area governments also receive grants but these funds are first funneled through the state.

²⁰ Section 288.7102(4), F.S.

²¹ See s. 215.97, F.S.

²² Section 288.7102(4)(d), F.S.

²³ Section 288.7102(5), F.S.

²⁴ Chapter 2012-118, L.O.F.

²⁵ The regulations implementing the CDBG Program are found at 24 C.F.R. Part 570.

²⁶ U.S. Department of Housing and Urban Development, Office of Block Grant Assistance, “Basically CDBG Guide,” (July 2012), available at https://www.onecpd.info/resources/documents/BasicallyCDBG_Guidebook.pdf (last visited March 10, 2014). “Maximum feasible deference” provides for minimal regulation beyond the statute; and states can adopt more restrictive requirements, but may not contradict or be inconsistent with the Housing and Community Development Act of 1974.

²⁷ *Id.* This is referred to as the “Entitlement Program” and to be eligible an entity must be a city in a metropolitan area with a population of 50,000 or more, a principal city of a metropolitan area, or an urban county with a population of at least 200,000.

In Florida, this competitive rural distribution mechanism is known as the Florida Small Cities Community Block Grant Program (Small Cities CDBG), which is administered by the DEO. The Small Cities CDBG program grants assistance to non-entitlement communities within the state (i.e., cities with fewer than 50,000 residents and counties with fewer than 200,000 residents). The state annually develops funding priorities and criteria for selecting projects.²⁸

Established in 1983, the intent of Florida's Small Cities CDBG program resonates with the federal CDBG legislation. The primary purposes of the program outlined in s. 290.0411, F.S., include community development and project planning activities to maintain viable communities, revitalize existing communities, expand economic development and employment opportunities, and improve housing conditions and expand housing opportunities, providing direct benefit to persons of low or moderate income.

Communities in the state with populations below the entitlement thresholds must compete for funding by submitting applications through the Small Cities CDBG programs. There are 246 communities eligible to participate in the program for the Federal Fiscal Year 2013 funding cycle.²⁹ The DEO annually develops funding priorities and criteria for selecting Small Cities CDBG projects subject to statutory provisions and applicable rules.³⁰

While federal regulations "give maximum feasible deference to the state's interpretation of the statutory requirements" of CDBG, Florida's Small Cities CDBG is bound by the national objectives and eligible activities of the federal act.³¹

Small Cities CDBG HUD Allocation

HUD determines the amount of the Small Cities CDBG funding allocation using a formula comprised of several measures of community need, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag in relationship to other states.³² Each year since 1983, Florida has received between \$18 and \$35 million from HUD for the program.³³ Florida's Federal Fiscal Year 2013 allocation is \$22,887,374.³⁴

²⁸ 24 C.F.R. Part 91 requires states to submit a consolidated plan 45 days before the start of its program year. The plan must include the objectives and outcomes identified in the plan, as well as an evaluation of past performance. The plan must also include a housing and homeless needs assessment, housing market analysis, a strategic plan for addressing identified needs and how the allocation of funds will resolve needs across income categories, an action plan, certain certifications, and a plan for monitoring the activities carried out under the program.

²⁹ The DEO, "State of Florida Annual Action Plan for Programs Funded by the U.S. Department of Housing and Urban Development, Federal Fiscal Year 2013," 10-12, *available at* <http://www.floridajobs.org/fhcd/cdbg/Files/ConsolidatedPlan/FINALAnnualActionPlan2013.pdf> (last visited March 10, 2014).

³⁰ Small Cities CDBG is administered in accordance with ss. 290.0401-290.048, F.S., ch. 73C-23, F.A.C., (formerly 9B-43), and 24 C.F.R. 570, Subpart I.

³¹ 24 C.F.R. s. 570.480(c).

³² HUD, "Community Development Block Grant – CDBG," *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs (last visited March 10, 2014).

³³ DEO, "Florida Small Cities Community Development Block Grant Program," *available at* <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/florida-small-cities-community-development-block-grant-program> (last visited March 10, 2013).

³⁴ The DEO, "State of Florida Annual Action Plan" at 5. Pending Congressional action on funding for federal fiscal year 2013, the Plan uses the federal fiscal year 2012 funding levels.

Categories of Funding

Section 290.044, F.S., specifies certain grant program categories for the Small Cities CDBG and allows the DEO to define the broad community objectives served by each category. Major grant categories and the DEO's defined objectives are:³⁵

- **Commercial Revitalization** – The objective of this category is to revitalize commercial areas that are showing signs of decline by addressing problems causing deterioration or decline. Activities that achieve this objective include installation or reconstruction of necessary public improvements, and repair and rehabilitation of building facades.
- **Economic Development** – Economic development objectives include promoting investment of private capital, retaining local economic enterprises, and providing long-term jobs with growth potential primarily for very low-, low-, and moderate-income persons. Activities that achieve this objective include acquisition, construction, or rehabilitation of commercial and industrial buildings, and activities designed to provide job training and job placement. Eligible local governments may apply up to three times in any annual funding cycle for an Economic Development grant. Applicants may have up to two open Economic Development grants.³⁶
- **Housing Rehabilitation** – The objective of this category is to improve housing conditions and expand housing opportunities for very low-, low- and moderate-income persons. Activities that achieve this objective include rehabilitation of housing or publicly owned or acquired properties, and weatherization and energy-efficiency improvements.
- **Neighborhood Revitalization** – The objective of this category is to revitalize declining neighborhoods and improve infrastructure. Activities that may achieve this objective may involve street paving, construction, or rehabilitation of neighborhood facilities that provide health, social, or recreational services.

Beyond the major funding categories, s. 290.044, F.S., also permits the DEO to annually set aside a portion of Small Cities CDBG funding for use in emergencies or natural disasters that have been declared by executive order. Funds not allocated under the emergency-related set-aside by the last quarter of the state Fiscal Year are distributed to unfunded applications from the other categories.

Local governments applying for Small Cities CDBG funds must consider national and state goals and objectives when developing applications for funding. Applications may reflect more than one activity, but each eligible activity must meet at least one of the three national objectives (i.e., benefit low- and moderate-income persons, eliminate slum or blight, or meet an urgent need).

Grant Selection Criteria and Process

Upon receipt of an application, an initial review is conducted by the DEO to determine if threshold criteria have been met. This review is used as a screening method to ensure compliance

³⁵ The DEO, "State of Florida Annual Action Plan."

³⁶ Rule 73C-23.0041(6)(f). F.A.C., stipulates that an economic development project must meet a national objective through the creation or retention of jobs, of which 51 percent must be jobs for persons from low to moderate-income households and must provide a public benefit by creating or retaining a number of full time equivalent jobs that divided into the subgrant amount results in a cost per job of under \$35,000.

with minimum application requirements. Specific criteria established by s. 290.0475, F.S., govern whether the DEO may reject an application without regard to scoring. These criteria are:

- The application is not received by the specified deadline date;
- The proposed project activities fail to meet one of the three national objectives;
- The proposed activities are not eligible;
- The proposed activities are not in compliance with the adopted local comprehensive plan;
- The applicant has an open Housing, Neighborhood or Commercial Revitalization CDBG;
- The local government is not in compliance with citizen participation requirements; or
- Information provided in the application that affects eligibility or scoring is misrepresented.

Section 290.046(3), F.S., establishes grant application ranking components and their respective score weighting:

- Community need (25 percent) measures the extent of poverty in the community and the condition of physical structures. Each application, regardless of program category is scored on the same community need criteria.³⁷
- Project impact (65 percent) measures the direct benefit received by persons of low income and persons of moderate income, the extent to which the problem identified is addressed by the proposed activities, and the extent to which resources other than the funds being applied for are being used to carry out the proposed activities. Project impact criteria are unique to each program category.³⁸
- Equal opportunity employment and housing performance (10 percent) measures outstanding efforts in this area.

While the Small Cities CDBG Program does not require local governments to provide matching funds, the competitive scoring criteria do favor applications that leverage other funds. Local government general revenue, as well as other loan and grant funds, may be counted as leveraged funds.

The DEO may not award a grant until it has determined, based upon a site visit, that a project or activities are eligible, in accordance with the description contained in the application.³⁹

Local Government Citizen Participation Requirements

Section 290.046, F.S., and federal regulations, set out the requirements local governments must follow to obtain citizen input for Small Cities CDBGs. Local governments submitting a CDBG application must comply with citizen participation requirements as provided in the Housing and Community Development Act of 1974, and the DEO's rules. To ensure compliance, these provisions are incorporated in grant applications, the scoring system and award agreements.⁴⁰ Prior to the submission of an application for funding, a local government must:

³⁷ Rule 73C-23.0041(10)(b)4., F.A.C., specifies three factors to determine community need: 1) the number of low and moderate income persons, 2) the number of persons below poverty level, and 3) the number of year-round housing units with 1.01 or more persons per room.

³⁸ Section 290.046(3)(d), F.S., further provides that the criteria used to measure the direct benefit to persons of low income and persons of moderate income shall represent no less than 42 percent of the points assigned to the program impact factor.

³⁹ Section 290.046(2)(d), F.S.

⁴⁰ The DEO, "State of Florida Annual Action Plan" at 22-23.

- Publicize information concerning the amount of funds available to the local government and the range of activities that may be undertaken.
- Hold at least one public hearing to obtain citizens' views on community development needs.
- Publish a notice concerning the proposed application advising citizens of the application's location and notifying them that it is available for inspection and comment.
- Publicly state its plans to assist displaced persons should displacement occur.
- Hold at least one public hearing on the proposed application prior to its submission to the state.
- If appropriate, modify the proposed application to respond to citizens' comments.⁴¹

In addition, a Citizen's Advisory Task Force must be established to provide input throughout the project process.⁴² At least three of the task force members are required to be residents of the jurisdiction where the proposed project or activities are to be implemented. No task force members may be elected officials and only one may be an employee of the local government.⁴³ Failure to meet these or any other citizen participation requirements will result in the rejection of an application pursuant to s. 290.0475(6), F.S.

DEO Recommendation on Small Cities CDBG: January 2012

Chapter 2011-142 L.O.F., directed the DEO to provide recommendations for further reorganization and streamlining that improve the effectiveness and operation of economic development and workforce programs. In January of 2012, the DEO released the "Report on Further Streamlining & Reorganization of Florida's Economic Development & Workforce Functions."⁴⁴ As one of its recommendations, the DEO suggested revisions to the Florida Small Cities Community Development Block Grant Act set forth in ch. 290, F.S.

The DEO's explanation for this recommendation included the following:

The Florida Small Cities Community Development Block Grant Act currently contains a number of provisions that restrict the program's ability to be flexible, agile or foster DEO's economic development emphasis. Revisions to the Act would allow DEO greater latitude to craft the program toward a more effective economic development outcome and would remove burdensome and unnecessary requirements beyond those required in the Code of Federal Regulations.

The desired outcome is to remove unnecessary regulation and competitive CDBG grant scoring criteria from statute and to put more of the framework of the CDBG grant scoring criteria in rule so that DEO has more agility and flexibility to work with our stakeholders to put more of an economic development focus on the Small Cities CDBG program and streamline the process for the other grant categories as well.

⁴¹ Section 290.046(5), F.S.

⁴² Section 290.046(6), F.S.

⁴³ See Rule 73C-23.0041(3)(b), F.A.C.

⁴⁴ This report is available at <http://www.floridajobs.org/about%20awi/12.31.2011%20-%20DEO%20Streamlining%20Report%20Jan%202012.pdf> (last visited March 10, 2014).

Space Florida

Space Florida⁴⁵ was created as an independent special district to “foster the growth and development of a sustainable and world-leading aerospace industry in this state.” Space Florida is required to promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.

Space Florida’s duties, among other things, include the development of a business plan to foster the growth and development of the aerospace industry, the creation of a marketing campaign, to help attract, develop, and retain aerospace research and technology, as well as other related activities. It is also charged with developing a space tourism marketing plan in consultation with Enterprise Florida, Inc.⁴⁶

Background on Reemployment Assistance

According to the U.S. Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.⁴⁷ Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).⁴⁸ FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. In addition, the FUTA pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.⁴⁹

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with the FUTA or the Social Security Act requirements. Florida’s unemployment insurance program was created by the Legislature in 1937.⁵⁰ The program was rebranded as the “reemployment assistance program” in 2012.⁵¹ The DEO is responsible for administering Florida’s reemployment assistance (RA) laws, primarily through its Division for Workforce Services. The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.⁵²

⁴⁵ Space Florida was created by ch. 2006-60, L.O.F., and codified in part II, ch. 331, F.S.

⁴⁶ Section 331.3051, F.S.

⁴⁷ USDOL, Employment and Training Administration, State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited March 10, 2014).

⁴⁸ FUTA is codified at 26 U.S.C.

⁴⁹ USDOL, Employment and Training Administration, Unemployment Insurance Tax Topic, available at <http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp> (last visited March 10, 2014).

⁵⁰ Chapter 18402, L.O.F.

⁵¹ Chapter 2012-30, L.O.F.

⁵² Section 443.1316, F.S.

A qualified claimant may receive RA benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.⁵³ Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant's length of prior employment and wages earned, and the unemployment rate.⁵⁴

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Initial Skills Review

Florida requires claimants to participate in an initial skills review in order to be eligible to receive RA benefits.⁵⁵ The initial skills review must be completed within 14 days of filing of a benefits claim; if it is not completed during that time, benefits may be denied. The initial skills review is an online training program that is approved by the DEO and is designed to measure an individual's mastery level of workplace skills.⁵⁶ The program takes approximately 30-45 minutes to complete. The administrator or operator of the online education or training program is required to report to the DEO that an individual has taken the initial skills test for benefit eligibility purposes, and to the regional workforce board or One-Stop Career Center, the results of the initial skills review for purposes of reemployment services. The regional workforce board is required to develop a plan to use the initial skills review to refer individuals to training and employment opportunities.⁵⁷

An individual may take the initial skills review at the assessment center or online at any location with Internet access. The assessment measures general skills necessary for most jobs in three areas: locating information, reading, and applied math. All the questions are based on workplace scenarios. After taking the initial skills review, an individual may take additional course material to try to improve his or her skills.⁵⁸ In Fiscal Year 2012-13, 424,886 individuals completed the initial skills review, and 61,676 individuals were denied for failure to timely complete the initial skills review.⁵⁹

⁵³ Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.

⁵⁴ Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum number of weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.

⁵⁵ Individuals who are not Florida residents, temporarily laid off, union members who customarily obtain employment through a union hiring hall, claiming benefits under a short-time compensation plan, or unable to complete the ISR due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or language impediment are exempt from the ISR requirement.

⁵⁶ Section 443.036(26), F.S.

⁵⁷ Section 443.091(1)(c), F.S.

⁵⁸ Florida Department of Economic Opportunity, Division of Workforce Services, "Report on the Use, Effectiveness and Costs Associated with Training Opportunities and Related Services Provided to Reemployment Assistance Claimants As Required by Chapter 2012-30, Laws of Florida," 6-7 (Dec. 28, 2012), available at http://www.floridajobs.org/about%20awi/open_government/2013_Chapter2012-30LawsofFloridareportReemploymentAssistanceProgram.pdf (last visited March 10, 2014).

⁵⁹ E-mail from Audra Wiggins, Operations Manager, Reemployment Assistance Program, Division of Workforce Services, Department of Economic Opportunity (Aug. 16, 2013) (on file with the Senate Commerce and Tourism Committee).

In 2012, the USDOL Civil Rights Center issued an initial determination as a result of a complaint of discrimination filed by the Miami Workers Center that found that the initial skills review might violate federal disability law in one of two ways.⁶⁰ It opined that the initial skills review, as implemented, had the tendency to screen out persons with disabilities from fully and equally enjoying the benefits of the RA program. Specifically, it was noted that the website required use of certain technology that could not easily be made accessible to persons with disabilities and no alternative method for completing the initial skills assessment was offered. Second, it found that the DEO did not effectively communicate to applicants that exemptions to the ISR were available to those with disabilities.

The DEO objected to the findings and there has been no resolution at this time.

Installment Plans

In Florida, RA benefits are financed solely through contributions by employers – employers pay taxes on the first \$8,000 of each employee’s wages.⁶¹ The calculation for determining each employer’s tax rate is statutorily set, and takes into consideration an employer’s “experience” (as former employees collect RA benefits, these benefits are charged to the employer), the balance of the Unemployment Compensation Trust Fund, and other factors.

Since 2010, state law has allowed employers to elect to make quarterly contributions to the UC Trust Fund, instead of making a single, annual contribution.⁶² Employers electing to pay quarterly are assessed an annual administrative fee of \$5. This fee is deposited into the DOR’s Operating Trust Fund. Currently, 2014 is the last year for this option.⁶³

Short Time Compensation Program

Short Time Compensation⁶⁴ (STC) is a voluntary program that allows employers to retain trained employees during a slow down or disruption to regular business activity by reducing the hours of work for an entire group of affected employees rather than laying off some while continuing others in full-time employment. An employer wishing to participate in the STC program must submit a signed, written short-time plan to the DEO for approval.⁶⁵ The plan will be approved if:

- The plan applies to and identifies each specific unit affected;
- The individuals in the affected unit are identified by name and social security number;
- The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent but not more than 40 percent;

⁶⁰ USDOL, Civil Rights Center, “Initial Determination,” (Apr. 5, 2013), available at

<http://www.floridajobs.org/about%20awidocs/media/InitialDetermination.pdf> (last visited March 10, 2014).

⁶¹ Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. State and local governments are reimbursing employers. Most employers are contributory employers. In January 2015, the “wage base” will be reduced to \$7,000. See s. 443.1217(2)(a), F.S.

⁶² Section 443.141(1)(d), F.S.

⁶³ Section 443.141(1)(f), F.S.

⁶⁴ Section 443.1116, F.S.

⁶⁵ Section 443.1116(2), F.S.

- The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of temporary layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;
- The plan applies to at least 10 percent of the employees in the affected unit;
- The plan has written approval of all collective bargaining groups covering individuals in the affected unit;
- The plan does not serve to subsidize seasonal employees during the off-season or subsidize employers who traditionally use part-time employees; and
- The plan certifies the manner in which the employer will treat fringe benefits⁶⁶ of the individuals in the affected unit if the hours of the individuals are reduced to less than their normal weekly hours.

To be eligible to receive benefits under an approved STC, an employee must meet the following conditions:

- Must be employed as a member of an affected unit in an approved plan;
- Must be able to work and available to work additional hours or full-time with the short-time employer; and
- Must have had work hours reduced by at least 10 percent but no more than 40 percent, with a corresponding reduction in wages.

In 2012, the Middle Class Tax Relief and Job Creation Act of 2012, passed by the U.S. Congress, made several changes to the STC program.⁶⁷ States are not required to enact an STC program, but must conform to the new law in order to continue to offer an STC program.⁶⁸

Rural Areas of Critical Economic Concern

The Rural Economic Development Initiative (REDI), housed within the DEO, is a multi-agency endeavor that coordinates the efforts of state and regional agencies to address the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.⁶⁹ The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development.

A rural area of critical economic concern (RACEC) is a community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, a natural disaster, or that presents a unique economic development opportunity of regional impact.⁷⁰

⁶⁶ Fringe benefits include, but are not limited to, health insurance, retirement benefits under defined benefit pension plans, paid vacation and holidays, and sick leave.

⁶⁷ Pub. Law No. 112-96, H.R. 3630, 112th Cong. (Feb. 22, 2012).

⁶⁸ USDOL, Employment and Training Administration, UIPL No. 22-12 (Jun. 18, 2012), *available at* http://wdr.doleta.gov/directives/attach/UIPL/UIPL_22_12_Acc.pdf (last visited March 10, 2014).

⁶⁹ Section 288.0656(3), F.S.

⁷⁰ Section 288.0656(2)(d), F.S.

Upon a recommendation from the REDI, the Governor may designate up to three RACEC areas. This designation allows these areas to receive priority assignments for the REDI, and allows the Governor, acting through the REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Currently, there are three designated RACEC areas consisting of the following counties and communities:

- Northwest RACEC - Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County.
- South Central RACEC – DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the Cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RACEC – Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.⁷¹

In 2012, Enterprise Florida, Inc., commissioned a study to help develop an economic development strategic plan for rural Florida.⁷² The study found that Florida had a fragmented framework for addressing rural economic development; that although rural Florida is perceived to be distressed and an “an area of critical economic concern,” it has greater assets than its potential competition in other southeastern states; and finally, the name “Rural Areas of Critical Economic Concern,” may be counterproductive when seeking positive attention from economic development interests. One of the strategic recommendations is to change the RACEC name.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3202, F.S., to correct a cross-reference that inadvertently left newly-created cities out of the requirement to update their land development regulations.

Loan Programs

Section 2 amends s. 288.005, F.S., to provide definitions for loan administrator and loan program. The bill defines “loan administrator” as a statutorily eligible recipient of state funds authorized by the DEO to make loans under a loan program. “Loan program” is defined as a program established under ch. 288, F.S., that provides appropriated funds to an eligible entity to further a specific state purpose for a limited time. The term loan program also includes “loan fund” or “loan pilot program.”

Section 3 creates s. 288.006, F.S., which outlines the procedure for operating all loan programs under ch. 288, F.S.

The bill provides that state funds appropriated for loan programs may only be used by an eligible recipient or loan administrator and these funds may only be used to carry out the specific state purpose of the loan program, subject to any compensation due to a recipient or loan administrator. The DEO may award state funds directly to an eligible recipient or to a loan

⁷¹ The DEO, Annual Report 2012-2013 (October 2013), 37, available at http://sitefinity.floridajobs.org/about%20awi/open_government/2013_DEOAnnualReport.pdf (last visited March 10, 2014).

⁷² Enterprise Florida, Inc., “Florida Rural Economic Development Study,” (December 2012), available at <http://www.enterpriseflorida.com/wp-content/uploads/12.31.2012-Rural-Strategy-Deliverable-Presentation.pdf> (last visited March 10, 2014).

administrator. All state funds, including any accrued interest, remain state funds unless statutory requirements of the loan program state otherwise.

Upon termination of a loan program, all appropriated funds will revert to the General Revenue Fund, minus any outstanding administrative expenses due. Upon termination of a contract between the DEO and an eligible recipient or loan administrator, any remaining funds will revert to the fund from which the appropriation was made. The DEO will become the successor entity for any outstanding loans and is directed to pay the former loan administrator for any allowable administrative expenses due to the loan administrator. However, this does not apply when the contract is terminated for fraud or a finding that the recipient or loan administrator was not meeting the terms of the program. The former loan administrator or recipient must execute all appropriate instruments to reconcile any remaining accounts associated with the terminated loan program or contract.

An eligible recipient or loan administrator must avoid any potential conflicts of interest regarding the use of loan program funds. Loan administrators, as well as their board members, employees, or agents, are not allowed to have a financial interest in an entity that is an eligible recipient of the loan program. The bill prohibits loans from being awarded to a person or entity if there is a conflict of interest between the parties involved without full disclosure of the conflict of interest to the DEO by the eligible recipient or loan administrator.

To determine eligibility as a recipient or as a loan administrator for a loan program, an applicant must submit an application to the DEO. The DEO must evaluate the applicant's business practices, financial stability, past performance in other state programs, and ability to meet the statutory requirements of the loan program. An applicant's eligibility may be conditionally granted or denied if the DEO determines that the entity is not compliant with any law, rule, or program requirement.

Revolving loans or new negotiable instruments using appropriated state funds that have been repaid to a loan administrator may be entered into when a loan program's statutory structure permits. However, all revolving loans or new negotiable instruments made by a loan administrator remain subject to the loan program requirements and compensation to a recipient or administrator is prohibited from exceeding the provisions that are permitted under ch. 288, F.S.

The bill authorizes the Auditor General to perform audits to verify that loan funds are expended by eligible recipients and loan administrators as required for each loan program. If the Auditor General determines that the funds are not expended as required, DEO must be notified so that it may pursue recovery of the funds. DEO is authorized to adopt rules to implement the provisions of the bill.

Florida Small Cities Community Development Block Grant Program

Section 4 amends s. 290.411, F.S., to reflect that the legislative intent and purpose of the Small Cities Community Development Block Grant Program Act also includes economic need as one of the factors to make a Florida community eligible to participate in the program and economic development programs as an activity for such communities to undertake.

Section 5 amends s. 290.044, F.S., to provide the DEO rule-making authority to establish guidelines to distribute the Small Cities CDBG program funds through a competitive selection process. Applicants will compete against each other in four grant program categories: housing rehabilitation, economic development, neighborhood revitalization, and commercial revitalization. The amendment deletes one program category: project planning and design. The DEO is directed to define broad community development objectives for the distribution of CDBG funds that are consistent with the national objectives, as established by federal law.

Section 6 amends s. 290.046, F.S., to substantially revise the application procedures for the Florida Small Cities CDBG Program. Eligible local governments may only submit one application for a noneconomic development project during an application cycle. An eligible local government may apply for an economic development grant up to three times each annual funding cycle but may only receive one such grant per annual funding cycle. A local government is permitted to have more than one open economic development grant.

A grant may not be awarded until the DEO has completed a site visit to verify the information contained in the award application.

The DEO must rank each application received based on criteria established by rule. The rankings must incorporate a procedure intended to reduce or eliminate any population-related bias that places exceptionally small communities at a competitive disadvantage. The bill repeals some specific criteria and procedures for scoring applications that currently exist in statute.

Project funding must be determined by the rankings established in each application cycle. If, at the conclusion of a funding cycle, economic development funding remains, those funds will be awarded to eligible projects on a first-come, first-served basis until funding for this category is fully obligated.

The application's program impact score, equal employment opportunity and fair housing score, and the communitywide needs score may take into consideration scoring factors that include: unemployment, poverty levels, benefits to low- and moderate-income residents, use of minority-owned or woman-owned businesses in previous grants, health and safety issues, and the condition of physical structures.

The bill makes the requirement that a local government must establish a Citizen's Advisory Task Force permissive. Local government citizen participation requirements are also substantially revised. An applicant must make information about the amount of funds available for various activities and the range of activities that may be undertaken available to the public. An applicant is also required to hold a minimum of two public meetings to solicit public input before submitting the final application. The applicant must conduct an initial hearing to solicit public input about community needs, to inform the public about funding opportunities to address those needs, and to discuss activities that may be undertaken. Prior to the second public hearing, the local government must publish a summary of the proposed application to give citizens the opportunity to review the contents of the application. A second public hearing must be held to obtain public comment about the proposed application and make appropriate modifications.

Section 7 amends s. 290.047, F.S., to provide that the maximum amount of block grant funds that may be spent on administrative costs under the economic development program category is \$120,000.⁷³ The maximum amount of block grant funds that may be spent on engineering and architectural costs for any grant must be in accordance with a method adopted by the DEO by rule.

Section 8 amends s. 290.0475, F.S., to update references to statutes and department rules.

Section 9 repeals s. 290.048(5), F.S., which grants the DEO the power to adopt and enforce requirements concerning an applicant's written description of a service area and required the inclusion of maps illustrating the proposed service area. This repeal is related to the substantial revisions to the application process.

Space Florida

Section 10 amends s. 331.3051, F.S., to require Space Florida to consult with the Florida Tourism Industry Marketing Corporation (VISIT Florida) in developing a space tourism marketing plan, and allows Space Florida and VISIT Florida to enter into a mutually beneficial agreement to implement the plan. VISIT Florida replaces Enterprise Florida, Inc., as Space Florida's partner in developing a space tourism marketing plan.

The bill repeals the requirement that Space Florida develop a proposal for a Center of Excellence for Aerospace. Space Florida must still collaborate with one or more public or private universities and other public or private entities to promote research necessary to develop commercially promising, advanced, and innovative science and technology so that it may transfer those discoveries to the public sector.

Reemployment Assistance

Initial Skills Review

Section 11 repeals s. 443.036(26), F.S., which provides a definition for "initial skills review."

Section 12 amends s. 443.091, F.S., to repeal the requirement that applicants for reemployment assistance must complete an initial skills review requirement for receipt of benefits. The bill directs DEO to offer a voluntary online assessment that will identify an individual's skills, abilities, and career aptitude. The assessment must be made available to any person seeking services from a regional workforce board or one-stop center. The results of the online assessment must be made available to the claimant, the regional workforce board, and the one-stop center. The individual must be informed of and encouraged to participate in services, including career counseling, provision of skill match and job market information, skills upgrade, and other training opportunities offered at no cost to the individual through the one-stop delivery service.

⁷³ Under current law, the maximum Small Cities CDBG administration costs are capped at 15 percent for housing grants and 8 percent for all other program category grants. A schedule of maximum percentage used for engineering costs is adopted by the DEO consistent with the schedule used by the U.S. Farmers Home Administration or another comparable schedule. See s. 290.047, F.S.

Aggregate data on the assessment outcomes may also be made available to Workforce Florida, Inc., also known as CareerSource Florida, and Enterprise Florida, Inc., for use in the development of policies related to education and training programs to ensure that businesses in this state have access to a skilled and competent workforce.

The bill authorizes DEO to competitively procure an online assessment system that will work seamlessly with the CONNECT system.⁷⁴

Short Time Compensation

Section 13 amends s. 443.1116, F.S., to bring Florida in conformity with federal law. As a part of its STC plan, the employer must certify that if fringe benefits are provided to an employee whose workweek is reduced under the program, the employer will continue to provide the fringe benefits while the employee is participating in the STC program under the same terms and conditions as if the employee were not a participant or to the same extent as other employees not participating in the STC program.

The STC plan must also describe the manner in which it will be implemented, including the provision of notice and an estimate of layoffs that would have occurred in the absence of the ability to participate in the STC program. The employer's written plan and its implementation must be consistent with the employer's obligations under applicable state and federal law.

The bill prohibits the DEO from denying STC benefits to an individual who is otherwise eligible due to her or his participation in employer-sponsored training or a training program under the Workforce Investment Act to improve job skills when the training is approved by the DEO. The bill defines "employer-sponsored training" as training sponsored by an employer to improve the skills of the employer's workers.

Installment Plans

Section 14 amends s. 443.141, F.S., to make the RA contribution installment plans a permanent option. Employers will continue to have the option of making quarterly contributions to the Unemployment Compensation Trust Fund for an annual administrative fee of \$5.

Sections 36 and 37 amend ss. 215.125 and 443.1216, F.S., to update statutory citations to conform to changes made by this bill.

Rural Areas of Critical Economic Concern

Section 15 through Section 35 amend ss. 125.271, 163.3177, 163.3187, 163.3246, 211.3103, 212.098, 218.67, 288.018, 288.065, 288.0655, 288.0656, 288.1088, 288.1089, 290.0055, 339.2819, 339.63, 373.4595, 380.06, 380.0651, 985.686, and 1011.76, F.S., to replace the phrase rural area of "critical economic concern" with rural area of "opportunity."

Section 38 provides an effective date of July 1, 2014.

⁷⁴ The CONNECT system is DEO's Reemployment Assistance Claims and Benefits Information System.

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:**

Continuation of the installment plan option for RA contributions may have an indeterminate effect on the balance of the Unemployment Compensation Trust Fund that could affect RA tax rates.

B. Private Sector Impact:

The availability of the STC program allows employers to avoid layoffs while retaining skilled employees.

For those employers that may experience difficulty in remitting an annual lump sum payment of RA contributions, the continuation of the installment plan option will provide an alternative means of payment and possibly reduce the risk of delinquency.

The rebranding of “rural areas of critical economic concern” to “rural areas of opportunity” may have a positive economic effect on these communities.

C. Government Sector Impact:

Indeterminate. The DEO has not analyzed the impacts of this bill.

The DEO will likely incur costs in the procurement of an online assessment. However, this may be partially offset by the elimination of the Initial Skills Review.

VI. Technical Deficiencies:

Section 290.0475(6), F.S., (line 520 of the bill) references the Housing and Community Development Act of 1984; however, the correct reference is the Housing and Community Development Act of 1974.

VII. Related Issues:

The bill authorizes the DEO to adopt rules relating to the general operation of loan programs and the Small Cities CDBG program.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.271, 163.3177, 163.3187, 163.3202, 163.3246, 211.3103, 212.098, 215.425, 218.67, 288.005, 288.018, 288.065, 288.0655, 288.0656, 288.1088, 288.1089, 290.0055, 290.0411, 290.044, 290.046, 290.047, 290.0475, 331.3051, 339.2819, 339.63, 373.4595, 380.06, 380.0651, 443.091, 443.1116, 443.1216, 443.141, 985.686, and 1011.76.

This bill creates section 288.006 of the Florida Statutes.

This bill repeals sections 443.036(26) and 290.048(5) of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism

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1 A bill to be entitled
2 An act relating to the Department of Economic
3 Opportunity; amending s. 163.3202, F.S.; requiring
4 each county and municipality to adopt and enforce land
5 development regulations in accordance with the
6 submitted comprehensive plan; amending s. 288.005,
7 F.S.; defining terms; creating s. 288.006, F.S.;
8 providing requirements for loan programs relating to
9 accountability and proper stewardship of funds;
10 authorizing the Auditor General to conduct audits for
11 a specified purpose; authorizing the department to
12 adopt rules; amending s. 290.0411, F.S.; revising
13 legislative intent for purposes of the Florida Small
14 Cities Community Development Block Grant Program;
15 amending s. 290.044, F.S.; requiring the Department of
16 Economic Opportunity to adopt rules establishing a
17 competitive selection process for loan guarantees and
18 grants awarded under the block grant program; revising
19 the criteria for the award of grants; amending s.
20 290.046, F.S.; revising limits on the number of grants
21 that an applicant may apply for and receive; revising
22 the requirement that the department conduct a site
23 visit before awarding a grant; requiring the
24 department to rank applications according to criteria
25 established by rule and to distribute funds according
26 to the rankings; revising scoring factors to consider
27 in ranking applications; revising requirements for
28 public hearings; providing that the creation of a
29 citizen advisory task force is discretionary, rather

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30 than required; deleting a requirement that a local
31 government obtain consent from the department for an
32 alternative citizen participation plan; amending s.
33 290.047, F.S.; revising the maximum amount and
34 percentage of block grant funds that may be spent on
35 certain costs and expenses; amending s. 290.0475,
36 F.S.; conforming provisions to changes made by the
37 act; amending s. 290.048, F.S.; deleting a provision
38 authorizing the department to adopt and enforce strict
39 requirements concerning an applicant's written
40 description of a service area; amending s. 331.3051,
41 F.S.; requiring Space Florida to consult with the
42 Florida Tourism Industry Marketing Corporation, rather
43 than with Enterprise Florida, Inc., in developing a
44 space tourism marketing plan; authorizing Space
45 Florida to enter into an agreement with the
46 corporation, rather than with Enterprise Florida,
47 Inc., for a specified purpose; revising the research
48 and development duties of Space Florida; repealing s.
49 443.036(26), relating to the definition of the term
50 "initial skills review"; amending s. 443.091, F.S.;
51 deleting the requirement that an unemployed individual
52 take an initial skill review before he or she is
53 eligible to receive reemployment assistance benefits;
54 requiring the department to make available for such
55 individual a voluntary online assessment that
56 identifies an individual's skills, abilities, and
57 career aptitude; requiring information from such
58 assessment to be made available to certain groups;

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59 revising the requirement that the department offer
60 certain training opportunities; amending s. 443.1116,
61 F.S.; defining the term "employer sponsored training";
62 revising the requirements for a short-term
63 compensation plan to be approved by the department;
64 revising the treatment of fringe benefits in such
65 plan; requiring an employer to describe the manner in
66 which the employer will implement the plan; requiring
67 the director to approve the plan if it is consistent
68 with employer obligations under law; prohibiting the
69 department from denying short-time compensation
70 benefits to certain individuals; amending s. 443.141,
71 F.S.; providing an employer payment schedule for
72 specified years' contributions to the Unemployment
73 Compensation Trust Fund; providing applicability;
74 amending ss. 125.271, 163.3177, 163.3187, 163.3246,
75 211.3103, 212.098, 218.67, 288.018, 288.065, 288.0655,
76 288.0656, 288.1088, 288.1089, 290.0055, 339.2819,
77 339.63, 373.4595, 380.06, 380.0651, 985.686, and
78 1011.76, F.S.; renaming "rural areas of critical
79 economic concern" as "rural areas of opportunity";
80 amending ss. 215.425 and 443.1216, F.S.; conforming
81 cross-references to changes made by the act; providing
82 an effective date.

83

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

85

86 Section 1. Subsection (1) of section 163.3202, Florida
87 Statutes, is amended to read:

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88 163.3202 Land development regulations.—

89 (1) Within 1 year after submission of its comprehensive
90 plan or revised comprehensive plan for review pursuant to s.
91 163.3191 s. ~~163.3167(2)~~, each county and each municipality shall
92 adopt or amend and enforce land development regulations that are
93 consistent with and implement their adopted comprehensive plan.

94 Section 2. Subsections (5) and (6) are added to section
95 288.005, Florida Statutes, to read:

96 288.005 Definitions.—As used in this chapter, the term:

97 (5) "Loan administrator" means a statutorily eligible
98 recipient of state funds which is authorized by the department
99 to make loans under a loan program.

100 (6) "Loan program" means a program established in this
101 chapter to provide appropriated funds to an eligible entity to
102 further a specific state purpose for a limited period of time.
103 The term includes a "loan fund" or "loan pilot program"
104 administered by the department under this chapter.

105 Section 3. Section 288.006, Florida Statutes, is created to
106 read:

107 288.006 General operation of loan programs.—

108 (1) The Legislature intends to promote the goals of
109 accountability and proper stewardship by recipients of loan
110 program funds. This section applies to all loan programs
111 established under this chapter.

112 (2) State funds appropriated for a loan program may be used
113 only by an eligible recipient or loan administrator, and the use
114 of such funds is restricted to the specific state purpose of the
115 loan program, subject to any compensation due to a recipient or
116 loan administrator as provided under this chapter. State funds

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117 may be awarded directly by the department to an eligible
118 recipient or awarded by the department to a loan administrator.
119 All state funds, including any interest earned, remain state
120 funds unless otherwise stated in the statutory requirements of
121 the loan program.

122 (3) (a) Upon termination of a loan program by the
123 Legislature or by statute, all appropriated funds shall revert
124 to the General Revenue Fund. The department shall pay the entity
125 for any allowable administrative expenses due to the loan
126 administrator as provided under this chapter, unless otherwise
127 required by law.

128 (b) Upon termination of a contract between the department
129 and an eligible recipient or loan administrator, all remaining
130 appropriated funds shall revert to the fund from which the
131 appropriation was made. The department shall become the
132 successor entity for any outstanding loans. Except in the case
133 of the termination of a contract for fraud or a finding that the
134 recipient or loan administrator was not meeting the terms of the
135 program, the department shall pay the entity for any allowable
136 administrative expenses due to the loan administrator as
137 provided under this chapter.

138 (c) The eligible recipient or loan administrator to which
139 this subsection applies shall execute all appropriate
140 instruments to reconcile any remaining accounts associated with
141 a terminated loan program or contract. The entity shall execute
142 all appropriate instruments to ensure that the department is
143 authorized to collect all receivables for outstanding loans,
144 including, but not limited to, assignments of promissory notes
145 and mortgages.

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146 (4) An eligible recipient or loan administrator must avoid
147 any potential conflict of interest regarding the use of
148 appropriated funds for a loan program. An eligible recipient or
149 loan administrator or a board member, employee, or agent thereof
150 may not have a financial interest in an entity that is awarded a
151 loan under a loan program. A loan may not be made to a person or
152 entity if a conflict of interest exists between the parties
153 involved unless the eligible recipient or loan administrator
154 provides the department with full disclosure of the conflict of
155 interest.

156 (5) In determining eligibility for an entity applying for
157 the award of funds directly by the department or applying for
158 selection as a loan administrator for a loan program, the
159 department shall evaluate each applicant's business practices,
160 financial stability, and past performance in other state
161 programs, in addition to the loan program's statutory
162 requirements. Eligibility of an entity applying to be a
163 recipient or loan administrator may be conditionally granted or
164 denied outright if the department determines that the entity is
165 noncompliant with any law, rule, or program requirement.

166 (6) Recurring use of state funds, including revolving loans
167 or new negotiable instruments, which have been repaid to the
168 loan administrator may be made if the loan program's statutory
169 structure permits. However, any use of state funds made by a
170 loan administrator remains subject to subsections (2) and (3),
171 and compensation to a loan administrator may not exceed any
172 limitation provided by this chapter.

173 (7) The Auditor General may conduct audits as provided in
174 s. 11.45 to verify that the appropriations under each loan

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175 program are expended by the eligible recipient or loan
176 administrator as required for each program. If the Auditor
177 General determines that the appropriations are not expended as
178 required, the Auditor General shall notify the department, which
179 may pursue recovery of the funds.

180 (8) The department may adopt rules under ss. 120.536(1) and
181 120.54 as necessary to carry out this section.

182 Section 4. Section 290.0411, Florida Statutes, is amended
183 to read:

184 290.0411 Legislative intent and purpose of ss. 290.0401-
185 290.048.—It is the intent of the Legislature to provide the
186 necessary means to develop, preserve, redevelop, and revitalize
187 Florida communities exhibiting signs of decline, ~~or~~ distress, or
188 economic need by enabling local governments to undertake the
189 necessary community and economic development programs. The
190 overall objective is to create viable communities by eliminating
191 slum and blight, fortifying communities in urgent need,
192 providing decent housing and suitable living environments, and
193 expanding economic opportunities, principally for persons of low
194 or moderate income. The purpose of ss. 290.0401-290.048 is to
195 assist local governments in carrying out effective community and
196 economic development and project planning and design activities
197 to arrest and reverse community decline and restore community
198 vitality. Community and economic development and project
199 planning activities to maintain viable communities, revitalize
200 existing communities, expand economic development and employment
201 opportunities, and improve housing conditions and expand housing
202 opportunities, providing direct benefit to persons of low or
203 moderate income, are the primary purposes of ss. 290.0401-

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204 290.048. The Legislature, therefore, declares that the
205 development, redevelopment, preservation, and revitalization of
206 communities in this state and all the purposes of ss. 290.0401-
207 290.048 are public purposes for which public money may be
208 borrowed, expended, loaned, pledged to guarantee loans, and
209 granted.

210 Section 5. Section 290.044, Florida Statutes, is amended to
211 read:

212 290.044 Florida Small Cities Community Development Block
213 Grant Program Fund; administration; distribution.—

214 (1) The Florida Small Cities Community Development Block
215 Grant Program Fund is created. All revenue designated for
216 deposit in such fund shall be deposited by the appropriate
217 agency. The department shall administer this fund as a grant and
218 loan guarantee program for carrying out the purposes of ss.
219 290.0401-290.048.

220 (2) The department shall distribute such funds as loan
221 guarantees and grants to eligible local governments on the basis
222 of a competitive selection process established by rule.

223 (3) The department shall require applicants for grants to
224 compete against each other in the following grant program
225 categories:

- 226 (a) Housing rehabilitation.
227 (b) Economic development.
228 (c) Neighborhood revitalization.
229 (d) Commercial revitalization.

230 (4)~~(3)~~ The department shall define ~~the~~ broad community
231 development objectives ~~objective~~ to be achieved by the
232 activities in each of the ~~following~~ grant program categories

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233 with the use of funds from the Florida Small Cities Community
234 Development Block Grant Program Fund. Such objectives shall be
235 designed to meet at least one of the national objectives
236 provided in the Housing and Community Development Act of 1974,
237 ~~and require applicants for grants to compete against each other~~
238 ~~in these grant program categories:~~

- 239 ~~(a) Housing.~~
240 ~~(b) Economic development.~~
241 ~~(c) Neighborhood revitalization.~~
242 ~~(d) Commercial revitalization.~~
243 ~~(e) Project planning and design.~~

244 (5)~~(4)~~ The department may set aside an amount of up to 5
245 percent of the funds annually for use in any eligible local
246 government jurisdiction for which an emergency or natural
247 disaster has been declared by executive order. Such funds may
248 only be provided to a local government to fund eligible
249 emergency-related activities for which no other source of
250 federal, state, or local disaster funds is available. The
251 department may provide for such set-aside by rule. In the last
252 quarter of the state fiscal year, any funds not allocated under
253 the emergency-related set-aside shall be distributed to unfunded
254 applications from the most recent funding cycle.

255 (6)~~(5)~~ The department shall establish a system of
256 monitoring grants, including site visits, to ensure the proper
257 expenditure of funds and compliance with the conditions of the
258 recipient's contract. The department shall establish criteria
259 for implementation of internal control, to include, but not be
260 limited to, the following measures:

- 261 (a) Ensuring that subrecipient audits performed by a

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262 certified public accountant are received and responded to in a
263 timely manner.

264 (b) Establishing a uniform system of monitoring that
265 documents appropriate followup as needed.

266 (c) Providing specific justification for contract
267 amendments that takes into account any change in contracted
268 activities and the resultant cost adjustments which shall be
269 reflected in the amount of the grant.

270 Section 6. Section 290.046, Florida Statutes, is amended to
271 read:

272 290.046 Applications for grants; procedures; requirements.-

273 (1) In applying for a grant under a specific program
274 category, an applicant shall propose eligible activities that
275 directly address the objectives ~~objective~~ of that program
276 category.

277 (2) (a) Except for applications for economic development
278 grants as provided in subparagraph (b)1. ~~paragraph (c),~~ an each
279 eligible local government may submit one ~~an~~ application for a
280 grant ~~under either the housing program category or the~~
281 ~~neighborhood revitalization program category~~ during each
282 application ~~annual funding~~ cycle. ~~An applicant may not receive~~
283 ~~more than one grant in any state fiscal year from any of the~~
284 ~~following categories: housing, neighborhood revitalization, or~~
285 ~~commercial revitalization.~~

286 (b) 1. ~~An~~ Except as provided in ~~paragraph (c),~~ each eligible
287 local government may apply up to three times in any one annual
288 funding cycle for an economic development ~~a grant under the~~
289 ~~economic development program category~~ but may not ~~shall~~ receive
290 ~~no~~ more than one such grant per annual funding cycle. A local

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291 government may have more than one open economic development
292 grant ~~Applications for grants under the economic development~~
293 ~~program category may be submitted at any time during the annual~~
294 ~~funding cycle, and such grants shall be awarded no less~~
295 ~~frequently than three times per funding cycle.~~

296 2. The department shall establish minimum criteria
297 pertaining to the number of jobs created for persons of low or
298 moderate income, the degree of private sector financial
299 commitment, and the economic feasibility of the proposed project
300 and shall establish any other criteria the department deems
301 appropriate. Assistance to a private, for-profit business may
302 not be provided from a grant award unless sufficient evidence
303 exists to demonstrate that without such public assistance the
304 creation or retention of such jobs would not occur.

305 (c)1. A local government ~~governments~~ with an open housing
306 rehabilitation, neighborhood revitalization, or commercial
307 revitalization contract is shall ~~be~~ eligible to apply for
308 another housing rehabilitation, neighborhood revitalization, or
309 commercial revitalization grant until administrative closeout of
310 its ~~their~~ existing contract. The department shall notify a local
311 government of administrative closeout or of any outstanding
312 closeout issues within 45 days after ~~of~~ receipt of a closeout
313 package from the local government. A local government
314 ~~governments~~ with an open housing rehabilitation, neighborhood
315 revitalization, or commercial revitalization community
316 development block grant contract whose activities are on
317 schedule in accordance with the expenditure rates and
318 accomplishments described in the contract may apply for an
319 economic development grant.

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320 2. A local government ~~governments~~ with an open economic
321 development community development block grant contract whose
322 activities are on schedule in accordance with the expenditure
323 rates and accomplishments described in the contract may apply
324 for a housing rehabilitation, ~~or~~ neighborhood revitalization, or
325 ~~and a~~ commercial revitalization community development block
326 grant. A local government ~~governments~~ with an open economic
327 development contract whose activities are on schedule in
328 accordance with the expenditure rates and accomplishments
329 described in the contract may receive no more than one
330 additional economic development grant in each fiscal year.

331 (d) ~~Beginning October 1, 1988,~~ The department may not shall
332 award a ~~no~~ grant until it the department has conducted
333 ~~determined,~~ based upon a site visit to verify the information
334 contained in the local government's application, ~~that the~~
335 ~~proposed area matches and adheres to the written description~~
336 ~~contained within the applicant's request. If, based upon review~~
337 ~~of the application or a site visit, the department determines~~
338 ~~that any information provided in the application which affects~~
339 ~~eligibility or scoring has been misrepresented, the applicant's~~
340 ~~request shall be rejected by the department pursuant to s.~~
341 ~~290.0475(7). Mathematical errors in applications which may be~~
342 ~~discovered and corrected by readily computing available numbers~~
343 ~~or formulas provided in the application shall not be a basis for~~
344 ~~such rejection.~~

345 (3) (a) The department shall rank each application received
346 during the application cycle according to criteria established
347 by rule. The ranking system shall include a procedure to
348 eliminate or reduce any population-related bias that places

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349 exceptionally small communities at a disadvantage in the
350 competition for funds ~~Each application shall be ranked~~
351 ~~competitively based on community need and program impact.~~
352 ~~Community need shall be weighted 25 percent. Program impact~~
353 ~~shall be weighted 65 percent. Outstanding performance in equal~~
354 ~~opportunity employment and housing shall be weighted 10 percent.~~

355 (b) Funds shall be distributed according to the rankings
356 established in each application cycle. If economic development
357 funds remain available after the application cycle closes, the
358 remaining funds shall be awarded to eligible projects on a
359 first-come, first-served basis until such funds are fully
360 obligated ~~The criteria used to measure community need shall~~
361 ~~include, at a minimum, indicators of the extent of poverty in~~
362 ~~the community and the condition of physical structures. Each~~
363 ~~application, regardless of the program category for which it is~~
364 ~~being submitted, shall be scored competitively on the same~~
365 ~~community need criteria. In recognition of the benefits~~
366 ~~resulting from the receipt of grant funds, the department shall~~
367 ~~provide for the reduction of community need scores for specified~~
368 ~~increments of grant funds provided to a local government since~~
369 ~~the state began using the most recent census data. In the year~~
370 ~~in which new census data are first used, no such reduction shall~~
371 ~~occur.~~

372 (c) The application's program impact score, equal
373 employment opportunity and fair housing score, and communitywide
374 needs score may take into consideration scoring factors,
375 including, but not limited to, unemployment, poverty levels,
376 low-income and moderate-income populations, benefits to low-
377 income and moderate-income residents, use of minority-owned and

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378 woman-owned business enterprises in previous grants, health and
379 safety issues, and the condition of physical structures The
380 ~~criteria used to measure the impact of an applicant's proposed~~
381 ~~activities shall include, at a minimum, indicators of the direct~~
382 ~~benefit received by persons of low income and persons of~~
383 ~~moderate income, the extent to which the problem identified is~~
384 ~~addressed by the proposed activities, and the extent to which~~
385 ~~resources other than the funds being applied for under this~~
386 ~~program are being used to carry out the proposed activities.~~

387 ~~(d) Applications shall be scored competitively on program~~
388 ~~impact criteria that are uniquely tailored to the community~~
389 ~~development objective established in each program category. The~~
390 ~~criteria used to measure the direct benefit to persons of low~~
391 ~~income and persons of moderate income shall represent no less~~
392 ~~than 42 percent of the points assigned to the program impact~~
393 ~~factor. For the housing and neighborhood revitalization~~
394 ~~categories, the department shall also include the following~~
395 ~~criteria in the scoring of applications:~~

396 ~~1. The proportion of very-low-income and low-income~~
397 ~~households served.~~

398 ~~2. The degree to which improvements are related to the~~
399 ~~health and safety of the households served.~~

400 ~~(4) An applicant for a neighborhood revitalization or~~
401 ~~commercial revitalization grant shall demonstrate that its~~
402 ~~activities are to be carried out in distinct service areas which~~
403 ~~are characterized by the existence of slums or blighted~~
404 ~~conditions, or by the concentration of persons of low or~~
405 ~~moderate income.~~

406 ~~(4)-(5)~~ In order to provide citizens with information

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407 concerning an applicant's proposed project, the applicant shall
408 make available to the public information concerning the amounts
409 of funds available for various activities and the range of
410 activities that may be undertaken. In addition, the applicant
411 shall hold a minimum of two public hearings in the local
412 jurisdiction within which the project is to be implemented to
413 obtain the views of citizens before submitting the final
414 application to the department. The applicant shall conduct the
415 initial hearing to solicit public input concerning community
416 needs, inform the public about funding opportunities available
417 to address community needs, and discuss activities that may be
418 undertaken. Before a second public hearing is held, the
419 applicant must publish a summary of the proposed application
420 that provides citizens with an opportunity to examine the
421 contents of the application and to submit comments. The
422 applicant shall conduct a second hearing to obtain comments from
423 citizens concerning the proposed application and to modify the
424 proposed application if appropriate ~~program before an~~
425 ~~application is submitted to the department, the applicant shall:~~
426 ~~(a) Make available to the public information concerning the~~
427 ~~amounts of funds available for various activities and the range~~
428 ~~of activities that may be undertaken.~~
429 ~~(b) Hold at least one public hearing to obtain the views of~~
430 ~~citizens on community development needs.~~
431 ~~(c) Develop and publish a summary of the proposed~~
432 ~~application that will provide citizens with an opportunity to~~
433 ~~examine its contents and submit their comments.~~
434 ~~(d) Consider any comments and views expressed by citizens~~
435 ~~on the proposed application and, if appropriate, modify the~~

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436 ~~proposed application.~~

437 ~~(e) Hold at least one public hearing in the jurisdiction~~
438 ~~within which the project is to be implemented to obtain the~~
439 ~~views of citizens on the final application prior to its~~
440 ~~submission to the department.~~

441 ~~(5)~~(6) The local government ~~may~~ shall establish a citizen
442 advisory task force composed of citizens in the jurisdiction in
443 which the proposed project is to be implemented to provide input
444 relative to all phases of the project process. ~~The local~~
445 ~~government must obtain consent from the department for any other~~
446 ~~type of citizen participation plan upon a showing that such plan~~
447 ~~is better suited to secure citizen participation for that~~
448 ~~locality.~~

449 ~~(6)~~(7) The department shall, before ~~prior to~~ approving an
450 application for a grant, determine that the applicant has the
451 administrative capacity to carry out the proposed activities and
452 has performed satisfactorily in carrying out past activities
453 funded by community development block grants. The evaluation of
454 past performance shall take into account procedural aspects of
455 previous grants as well as substantive results. If the
456 department determines that any applicant has failed to
457 accomplish substantially the results it proposed in its last
458 previously funded application, it may prohibit the applicant
459 from receiving a grant or may penalize the applicant in the
460 rating of the current application. An ~~No~~ application for grant
461 funds may not be denied solely upon the basis of the past
462 performance of the eligible applicant.

463 Section 7. Subsections (3) and (6) of section 290.047,
464 Florida Statutes, are amended to read:

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465 290.047 Establishment of grant ceilings and maximum
 466 administrative cost percentages; elimination of population bias;
 467 loans in default.-

468 (3) The maximum percentage of block grant funds that can be
 469 spent on administrative costs by an eligible local government
 470 shall be 15 percent for the housing rehabilitation program
 471 category, 8 percent for both the neighborhood and the commercial
 472 revitalization program categories, and 8 percent for the
 473 economic development program category. The maximum amount of
 474 block grant funds that may be spent on administrative costs by
 475 an eligible local government for the economic development
 476 program category is \$120,000. The purpose of the ceiling is to
 477 maximize the amount of block grant funds actually going toward
 478 the redevelopment of the area. The department will continue to
 479 encourage eligible local governments to consider ways to limit
 480 the amount of block grant funds used for administrative costs,
 481 consistent with the need for prudent management and
 482 accountability in the use of public funds. However, this
 483 subsection does ~~shall not be construed, however, to~~ prohibit
 484 eligible local governments from contributing their own funds or
 485 making in-kind contributions to cover administrative costs which
 486 exceed the prescribed ceilings, provided that all such
 487 contributions come from local government resources other than
 488 Community Development Block Grant funds.

489 (6) The maximum amount ~~percentage~~ of block grant funds that
 490 may be spent on engineering and architectural costs by an
 491 eligible local government shall be determined in accordance with
 492 a method ~~schedule~~ adopted by the department by rule. Any such
 493 method ~~schedule~~ so adopted shall be consistent with the schedule

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494 used by the United States Farmer's Home Administration as
495 applied to projects in Florida or another comparable schedule as
496 amended.

497 Section 8. Section 290.0475, Florida Statutes, is amended
498 to read:

499 290.0475 Rejection of grant applications; penalties for
500 failure to meet application conditions.—Applications are
501 ineligible received for funding if ~~under all program categories~~
502 ~~shall be rejected without scoring only in the event that~~ any of
503 the following circumstances arise:

504 (1) The application is not received by the department by
505 the application deadline;~~—~~

506 (2) The proposed project does not meet one of the three
507 national objectives as contained in federal and state
508 legislation;~~—~~

509 (3) The proposed project is not an eligible activity as
510 contained in the federal legislation;~~—~~

511 (4) The application is not consistent with the local
512 government's comprehensive plan adopted pursuant to s.
513 163.3184;~~—~~

514 (5) The applicant has an open community development block
515 grant, except as provided in s. 290.046(2)(b) and (c) and
516 department rules; ~~290.046(2)(e).~~

517 (6) The local government is not in compliance with the
518 citizen participation requirements prescribed in ss. 104(a)(1)
519 and (2) and 106(d)(5)(c) of Title I of the Housing and Community
520 Development Act of 1984, s. 290.046(4), and department rules;
521 or—

522 (7) Any information provided in the application that

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523 affects eligibility or scoring is found to have been
524 misrepresented, and the information is not a mathematical error
525 which may be discovered and corrected by readily computing
526 available numbers or formulas provided in the application.

527 Section 9. Subsection (5) of section 290.048, Florida
528 Statutes, is amended to read:

529 290.048 General powers of department under ss. 290.0401-
530 290.048.—The department has all the powers necessary or
531 appropriate to carry out the purposes and provisions of the
532 program, including the power to:

533 ~~(5) Adopt and enforce strict requirements concerning an~~
534 ~~applicant's written description of a service area. Each such~~
535 ~~description shall contain maps which illustrate the location of~~
536 ~~the proposed service area. All such maps must be clearly legible~~
537 ~~and must:~~

538 ~~(a) Contain a scale which is clearly marked on the map.~~

539 ~~(b) Show the boundaries of the locality.~~

540 ~~(c) Show the boundaries of the service area where the~~
541 ~~activities will be concentrated.~~

542 ~~(d) Display the location of all proposed area activities.~~

543 ~~(e) Include the names of streets, route numbers, or easily~~
544 ~~identifiable landmarks where all service activities are located.~~

545 Section 10. Subsection (5) and paragraph (b) of subsection
546 (8) of section 331.3051, Florida Statutes, are amended to read:

547 331.3051 Duties of Space Florida.—Space Florida shall:

548 (5) Consult with the Florida Tourism Industry Marketing
549 Corporation ~~Enterprise Florida, Inc.,~~ in developing a space
550 tourism marketing plan. Space Florida and the Florida Tourism
551 Industry Marketing Corporation ~~Enterprise Florida, Inc.,~~ may

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552 enter into a mutually beneficial agreement that provides funding
553 to the corporation ~~Enterprise Florida, Inc.~~, for its services to
554 implement this subsection.

555 (8) Carry out its responsibility for research and
556 development by:

557 (b) Working in collaboration with one or more public or
558 private universities and other public or private entities to
559 ~~develop a proposal for a Center of Excellence for Aerospace that~~
560 ~~will foster and~~ promote the research necessary to develop
561 commercially promising, advanced, and innovative science and
562 technology and ~~will~~ transfer those discoveries to the commercial
563 sector.

564 Section 11. Subsection (26) of section 443.036, Florida
565 Statutes, is repealed.

566 Section 12. Paragraph (c) of subsection (1) of section
567 443.091, Florida Statutes, is amended to read:

568 443.091 Benefit eligibility conditions.—

569 (1) An unemployed individual is eligible to receive
570 benefits for any week only if the Department of Economic
571 Opportunity finds that:

572 (c) To make continued claims for benefits, she or he is
573 reporting to the department in accordance with this paragraph
574 and department rules, ~~and participating in an initial skills~~
575 ~~review, as directed by the department.~~ Department rules may not
576 conflict with s. 443.111(1)(b), which requires that each
577 claimant continue to report regardless of any pending appeal
578 relating to her or his eligibility or disqualification for
579 benefits.

580 1. For each week of unemployment claimed, each report must,

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581 at a minimum, include the name, address, and telephone number of
582 each prospective employer contacted, or the date the claimant
583 reported to a one-stop career center, pursuant to paragraph (d).

584 2. The department must offer an online assessment that
585 serves to identify an individual's skills, abilities, and career
586 aptitude. The skills assessment must be voluntary, and the
587 department must allow a claimant to choose whether to take the
588 skills assessment. The online assessment shall be made available
589 to any person seeking services from a regional workforce board
590 or a one-stop career center ~~The administrator or operator of the~~
591 ~~initial skills review shall notify the department when the~~
592 ~~individual completes the initial skills review and report the~~
593 ~~results of the review to the regional workforce board or the~~
594 ~~one-stop career center as directed by the workforce board. The~~
595 ~~department shall prescribe a numeric score on the initial skills~~
596 ~~review that demonstrates a minimal proficiency in workforce~~
597 ~~skills.~~

598 a. If the claimant chooses to take the online assessment,
599 the outcome of the assessment must be made available to the
600 claimant, regional workforce board, and one-stop career center.
601 The department, workforce board, or one-stop career center shall
602 use the assessment ~~initial skills review~~ to develop a plan for
603 referring individuals to training and employment opportunities.
604 Aggregate data on assessment outcomes may be made available to
605 Workforce Florida, Inc., and Enterprise Florida, Inc., for use
606 in the development of policies related to education and training
607 programs that will ensure that businesses in this state have
608 access to a skilled and competent workforce ~~The failure of the~~
609 ~~individual to comply with this requirement will result in the~~

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610 ~~individual being determined ineligible for benefits for the week~~
611 ~~in which the noncompliance occurred and for any subsequent week~~
612 ~~of unemployment until the requirement is satisfied. However,~~
613 ~~this requirement does not apply if the individual is exempt from~~
614 ~~the work registration requirement as set forth in paragraph (b).~~

615 b.3. Individuals ~~Any individual who falls below the minimal~~
616 ~~proficiency score prescribed by the department in subparagraph~~
617 ~~2. on the initial skills review shall be informed of and offered~~
618 ~~services through the one-stop delivery system, including career~~
619 ~~counseling, provision of skill match and job market information,~~
620 ~~and skills upgrade and other training opportunities, and shall~~
621 ~~be encouraged to participate in such services training at no~~
622 ~~cost to the individuals individual in order to improve his or~~
623 ~~her workforce skills to the minimal proficiency level.~~

624 4. ~~The department shall coordinate with Workforce Florida,~~
625 ~~Inc., the workforce boards, and the one-stop career centers to~~
626 ~~identify, develop, and use utilize best practices for improving~~
627 ~~the skills of individuals who choose to participate in skills~~
628 ~~upgrade and other training opportunities. The department may~~
629 ~~contract with an entity to create the online assessment in~~
630 ~~accordance with the competitive bidding requirements in s.~~
631 ~~287.057. The online assessment must work seamlessly with the~~
632 ~~Reemployment Assistance Claims and Benefits Information System~~
633 ~~and who have a minimal proficiency score below the score~~
634 ~~prescribed in subparagraph 2.~~

635 ~~5. The department, in coordination with Workforce Florida,~~
636 ~~Inc., the workforce boards, and the one-stop career centers,~~
637 ~~shall evaluate the use, effectiveness, and costs associated with~~
638 ~~the training prescribed in subparagraph 3. and report its~~

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639 ~~findings and recommendations for training and the use of best~~
640 ~~practices to the Governor, the President of the Senate, and the~~
641 ~~Speaker of the House of Representatives by January 1, 2013.~~

642 Section 13. Subsections (1), (2), and (5) of section
643 443.1116, Florida Statutes, are amended to read:

644 443.1116 Short-time compensation.—

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

646 (a) "Affected unit" means a specified plant, department,
647 shift, or other definable unit of two or more employees
648 designated by the employer to participate in a short-time
649 compensation plan.

650 (b) "Employer-sponsored training" means a training
651 component sponsored by an employer to improve the skills of the
652 employer's workers.

653 (c)~~(b)~~ "Normal weekly hours of work" means the number of
654 hours in a week that an individual would regularly work for the
655 short-time compensation employer, not to exceed 40 hours,
656 excluding overtime.

657 (d)~~(e)~~ "Short-time compensation benefits" means benefits
658 payable to individuals in an affected unit under an approved
659 short-time compensation plan.

660 (e)~~(d)~~ "Short-time compensation employer" means an employer
661 with a short-time compensation plan in effect.

662 (f)~~(e)~~ "Short-time compensation plan" or "plan" means an
663 employer's written plan for reducing unemployment under which an
664 affected unit shares the work remaining after its normal weekly
665 hours of work are reduced.

666 (2) APPROVAL OF SHORT-TIME COMPENSATION PLANS.—An employer
667 wishing to participate in the short-time compensation program

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668 must submit a signed, written, short-time plan to the Department
669 of Economic Opportunity for approval. The director or his or her
670 designee shall approve the plan if:

671 (a) The plan applies to and identifies each specific
672 affected unit;

673 (b) The individuals in the affected unit are identified by
674 name and social security number;

675 (c) The normal weekly hours of work for individuals in the
676 affected unit are reduced by at least 10 percent and by not more
677 than 40 percent;

678 (d) The plan includes a certified statement by the employer
679 that the aggregate reduction in work hours is in lieu of
680 ~~temporary~~ layoffs that would affect at least 10 percent of the
681 employees in the affected unit and that would have resulted in
682 an equivalent reduction in work hours;

683 (e) The plan applies to at least 10 percent of the
684 employees in the affected unit;

685 (f) The plan is approved in writing by the collective
686 bargaining agent for each collective bargaining agreement
687 covering any individual in the affected unit;

688 (g) The plan does not serve as a subsidy to seasonal
689 employers during the off-season or as a subsidy to employers who
690 traditionally use part-time employees; ~~and~~

691 (h) The plan certifies that, if the employer provides
692 fringe benefits to any employee whose workweek is reduced under
693 the program, the fringe benefits will continue to be provided to
694 the employee participating in the short-time compensation
695 program under the same terms and conditions as though the
696 workweek of such employee had not been reduced or to the same

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697 ~~extent as other employees not participating in the short-time~~
 698 ~~compensation program the manner in which the employer will treat~~
 699 ~~fringe benefits of the individuals in the affected unit if the~~
 700 ~~hours of the individuals are reduced to less than their normal~~
 701 ~~weekly hours of work.~~ As used in this paragraph, the term
 702 "fringe benefits" includes, but is not limited to, health
 703 insurance, retirement benefits under defined benefit pension
 704 plans as defined in subsection 35 of s. 1002 of the Employee
 705 Retirement Income Security Act of 1974, 29 U.S.C., contributions
 706 under a defined contribution plan as defined in s. 414(i) of the
 707 Internal Revenue Code, paid vacation and holidays, and sick
 708 leave;:-

709 (i) The plan describes the manner in which the requirements
 710 of this subsection will be implemented, including a plan for
 711 giving notice, if feasible, to an employee whose workweek is to
 712 be reduced, together with an estimate of the number of layoffs
 713 that would have occurred absent the ability to participate in
 714 short-time compensation; and

715 (j) The terms of the employer's written plan and
 716 implementation are consistent with employer obligations under
 717 applicable federal laws and laws of this state.

718 (5) ELIGIBILITY REQUIREMENTS FOR SHORT-TIME COMPENSATION
 719 BENEFITS.—

720 (a) Except as provided in this subsection, an individual is
 721 eligible to receive short-time compensation benefits for any
 722 week only if she or he complies with this chapter and the
 723 Department of Economic Opportunity finds that:

724 1. The individual is employed as a member of an affected
 725 unit in an approved plan that was approved before the week and

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726 is in effect for the week;

727 2. The individual is able to work and is available for
728 additional hours of work or for full-time work with the short-
729 time employer; and

730 3. The normal weekly hours of work of the individual are
731 reduced by at least 10 percent but not by more than 40 percent,
732 with a corresponding reduction in wages.

733 (b) The department may not deny short-time compensation
734 benefits to an individual who is otherwise eligible for these
735 benefits for any week by reason of the application of any
736 provision of this chapter relating to availability for work,
737 active search for work, or refusal to apply for or accept work
738 from other than the short-time compensation employer of that
739 individual.

740 (c) The department may not deny short-time compensation
741 benefits to an individual who is otherwise eligible for these
742 benefits for any week because such individual is participating
743 in an employer-sponsored training or a training under the
744 Workforce Investment Act to improve job skills when the training
745 is approved by the department.

746 (d)~~(e)~~ Notwithstanding any other provision of this chapter,
747 an individual is deemed unemployed in any week for which
748 compensation is payable to her or him, as an employee in an
749 affected unit, for less than her or his normal weekly hours of
750 work in accordance with an approved short-time compensation plan
751 in effect for the week.

752 Section 14. Paragraph (f) of subsection (1) of section
753 443.141, Florida Statutes, is amended to read:

754 443.141 Collection of contributions and reimbursements.—

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755 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
756 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

757 (f) *Payments for ~~2012, 2013, and 2014~~ contributions.*—For an
758 annual administrative fee not to exceed \$5, a contributing
759 employer may pay its quarterly contributions due for wages paid
760 in the first three quarters of each year ~~of 2012, 2013, and 2014~~
761 in equal installments if those contributions are paid as
762 follows:

763 1. For contributions due for wages paid in the first
764 quarter of each year, one-fourth of the contributions due must
765 be paid on or before April 30, one-fourth must be paid on or
766 before July 31, one-fourth must be paid on or before October 31,
767 and one-fourth must be paid on or before December 31.

768 2. In addition to the payments specified in subparagraph
769 1., for contributions due for wages paid in the second quarter
770 of each year, one-third of the contributions due must be paid on
771 or before July 31, one-third must be paid on or before October
772 31, and one-third must be paid on or before December 31.

773 3. In addition to the payments specified in subparagraphs
774 1. and 2., for contributions due for wages paid in the third
775 quarter of each year, one-half of the contributions due must be
776 paid on or before October 31, and one-half must be paid on or
777 before December 31.

778 4. The annual administrative fee assessed for electing to
779 pay under the installment method shall be collected at the time
780 the employer makes the first installment payment each year. The
781 fee shall be segregated from the payment and deposited into the
782 Operating Trust Fund of the Department of Revenue.

783 5. Interest does not accrue on any contribution that

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784 becomes due for wages paid in the first three quarters of each
785 year if the employer pays the contribution in accordance with
786 subparagraphs 1.-4. Interest and fees continue to accrue on
787 prior delinquent contributions and commence accruing on all
788 contributions due for wages paid in the first three quarters of
789 each year which are not paid in accordance with subparagraphs
790 1.-3. Penalties may be assessed in accordance with this chapter.
791 The contributions due for wages paid in the fourth quarter ~~of~~
792 ~~2012, 2013, and 2014~~ are not affected by this paragraph and are
793 due and payable in accordance with this chapter.

794 Section 15. Paragraph (a) of subsection (1) of section
795 125.271, Florida Statutes, is amended to read:

796 125.271 Emergency medical services; county emergency
797 medical service assessments.-

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

799 (a) A county that is within a rural area of opportunity
800 ~~critical economic concern~~ as designated by the Governor pursuant
801 to s. 288.0656;

802

803 Once a county has qualified under this subsection, it always
804 retains the qualification.

805 Section 16. Paragraphs (a), (b), and (e) of subsection (7)
806 of section 163.3177, Florida Statutes, are amended to read:

807 163.3177 Required and optional elements of comprehensive
808 plan; studies and surveys.-

809 (7) (a) The Legislature finds that:

810 1. There are a number of rural agricultural industrial
811 centers in the state that process, produce, or aid in the
812 production or distribution of a variety of agriculturally based

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813 products, including, but not limited to, fruits, vegetables,
814 timber, and other crops, and juices, paper, and building
815 materials. Rural agricultural industrial centers have a
816 significant amount of existing associated infrastructure that is
817 used for processing, producing, or distributing agricultural
818 products.

819 2. Such rural agricultural industrial centers are often
820 located within or near communities in which the economy is
821 largely dependent upon agriculture and agriculturally based
822 products. The centers significantly enhance the economy of such
823 communities. However, these agriculturally based communities are
824 often socioeconomically challenged and designated as rural areas
825 of opportunity ~~critical economic concern~~. If such rural
826 agricultural industrial centers are lost and not replaced with
827 other job-creating enterprises, the agriculturally based
828 communities will lose a substantial amount of their economies.

829 3. The state has a compelling interest in preserving the
830 viability of agriculture and protecting rural agricultural
831 communities and the state from the economic upheaval that would
832 result from short-term or long-term adverse changes in the
833 agricultural economy. To protect these communities and promote
834 viable agriculture for the long term, it is essential to
835 encourage and permit diversification of existing rural
836 agricultural industrial centers by providing for jobs that are
837 not solely dependent upon, but are compatible with and
838 complement, existing agricultural industrial operations and to
839 encourage the creation and expansion of industries that use
840 agricultural products in innovative ways. However, the expansion
841 and diversification of these existing centers must be

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842 accomplished in a manner that does not promote urban sprawl into
843 surrounding agricultural and rural areas.

844 (b) As used in this subsection, the term "rural
845 agricultural industrial center" means a developed parcel of land
846 in an unincorporated area on which there exists an operating
847 agricultural industrial facility or facilities that employ at
848 least 200 full-time employees in the aggregate and process and
849 prepare for transport a farm product, as defined in s. 163.3162,
850 or any biomass material that could be used, directly or
851 indirectly, for the production of fuel, renewable energy,
852 bioenergy, or alternative fuel as defined by law. The center may
853 also include land contiguous to the facility site which is not
854 used for the cultivation of crops, but on which other existing
855 activities essential to the operation of such facility or
856 facilities are located or conducted. The parcel of land must be
857 located within, or within 10 miles of, a rural area of
858 opportunity critical economic concern.

859 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
860 ~~to~~ confer the status of rural area of opportunity critical
861 ~~economic concern~~, or any of the rights or benefits derived from
862 such status, on any land area not otherwise designated as such
863 pursuant to s. 288.0656(7).

864 Section 17. Subsection (3) of section 163.3187, Florida
865 Statutes, is amended to read:

866 163.3187 Process for adoption of small-scale comprehensive
867 plan amendment.—

868 (3) If the small scale development amendment involves a
869 site within a rural area of opportunity critical economic
870 ~~concern~~ as defined under s. 288.0656(2) (d) for the duration of

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871 such designation, the 10-acre limit listed in subsection (1)
872 shall be increased by 100 percent to 20 acres. The local
873 government approving the small scale plan amendment shall
874 certify to the Office of Tourism, Trade, and Economic
875 Development that the plan amendment furthers the economic
876 objectives set forth in the executive order issued under s.
877 288.0656(7), and the property subject to the plan amendment
878 shall undergo public review to ensure that all concurrency
879 requirements and federal, state, and local environmental permit
880 requirements are met.

881 Section 18. Subsection (10) of section 163.3246, Florida
882 Statutes, is amended to read:

883 163.3246 Local government comprehensive planning
884 certification program.—

885 (10) Notwithstanding subsections (2), (4), (5), (6), and
886 (7), any municipality designated as a rural area of opportunity
887 ~~critical economic concern~~ pursuant to s. 288.0656 which is
888 located within a county eligible to levy the Small County Surtax
889 under s. 212.055(3) shall be considered certified during the
890 effectiveness of the designation of rural area of opportunity
891 ~~critical economic concern~~. The state land planning agency shall
892 provide a written notice of certification to the local
893 government of the certified area, which shall be considered
894 final agency action subject to challenge under s. 120.569. The
895 notice of certification shall include the following components:

896 (a) The boundary of the certification area.

897 (b) A requirement that the local government submit ~~either~~
898 an annual or biennial monitoring report to the state land
899 planning agency according to the schedule provided in the

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900 written notice. The monitoring report shall, at a minimum,
901 include the number of amendments to the comprehensive plan
902 adopted by the local government, the number of plan amendments
903 challenged by an affected person, and the disposition of those
904 challenges.

905 Section 19. Paragraph (a) of subsection (6) of section
906 211.3103, Florida Statutes, is amended to read:

907 211.3103 Levy of tax on severance of phosphate rock; rate,
908 basis, and distribution of tax.—

909 (6) (a) Beginning July 1 of the 2011-2012 fiscal year, the
910 proceeds of all taxes, interest, and penalties imposed under
911 this section are exempt from the general revenue service charge
912 provided in s. 215.20, and such proceeds shall be paid into the
913 State Treasury as follows:

914 1. To the credit of the Conservation and Recreation Lands
915 Trust Fund, 25.5 percent.

916 2. To the credit of the General Revenue Fund of the state,
917 35.7 percent.

918 3. For payment to counties in proportion to the number of
919 tons of phosphate rock produced from a phosphate rock matrix
920 located within such political boundary, 12.8 percent. The
921 department shall distribute this portion of the proceeds
922 annually based on production information reported by the
923 producers on the annual returns for the taxable year. Any such
924 proceeds received by a county shall be used only for phosphate-
925 related expenses.

926 4. For payment to counties that have been designated as a
927 rural area of opportunity ~~critical economic concern~~ pursuant to
928 s. 288.0656 in proportion to the number of tons of phosphate

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929 rock produced from a phosphate rock matrix located within such
930 political boundary, 10.0 percent. The department shall
931 distribute this portion of the proceeds annually based on
932 production information reported by the producers on the annual
933 returns for the taxable year. Payments under this subparagraph
934 shall be made to the counties unless the Legislature by special
935 act creates a local authority to promote and direct the economic
936 development of the county. If such authority exists, payments
937 shall be made to that authority.

938 5. To the credit of the Nonmandatory Land Reclamation Trust
939 Fund, 6.2 percent.

940 6. To the credit of the Phosphate Research Trust Fund in
941 the Division of Universities of the Department of Education, 6.2
942 percent.

943 7. To the credit of the Minerals Trust Fund, 3.6 percent.

944 Section 20. Paragraph (c) of subsection (1) of section
945 212.098, Florida Statutes, is amended to read:

946 212.098 Rural Job Tax Credit Program.—

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

948 (c) "Qualified area" means any area that is contained
949 within a rural area of opportunity ~~critical-economic-concern~~
950 designated under s. 288.0656, a county that has a population of
951 fewer than 75,000 persons, or a county that has a population of
952 125,000 or less and is contiguous to a county that has a
953 population of less than 75,000, selected in the following
954 manner: every third year, the Department of Economic Opportunity
955 shall rank and tier the state's counties according to the
956 following four factors:

957 1. Highest unemployment rate for the most recent 36-month

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958 period.

959 2. Lowest per capita income for the most recent 36-month
960 period.

961 3. Highest percentage of residents whose incomes are below
962 the poverty level, based upon the most recent data available.

963 4. Average weekly manufacturing wage, based upon the most
964 recent data available.

965 Section 21. Subsection (1) of section 218.67, Florida
966 Statutes, is amended to read:

967 218.67 Distribution for fiscally constrained counties.—

968 (1) Each county that is entirely within a rural area of
969 opportunity ~~critical economic concern~~ as designated by the
970 Governor pursuant to s. 288.0656 or each county for which the
971 value of a mill will raise no more than \$5 million in revenue,
972 based on the taxable value certified pursuant to s.
973 1011.62(4)(a)1.a., from the previous July 1, shall be considered
974 a fiscally constrained county.

975 Section 22. Subsection (1) of section 288.018, Florida
976 Statutes, is amended to read:

977 288.018 Regional Rural Development Grants Program.—

978 (1) The department shall establish a matching grant program
979 to provide funding to regionally based economic development
980 organizations representing rural counties and communities for
981 the purpose of building the professional capacity of their
982 organizations. Such matching grants may also be used by an
983 economic development organization to provide technical
984 assistance to businesses within the rural counties and
985 communities that it serves. The department is authorized to
986 approve, on an annual basis, grants to such regionally based

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987 economic development organizations. The maximum amount an
 988 organization may receive in any year will be \$35,000, or
 989 \$100,000 in a rural area of opportunity ~~critical-economic~~
 990 ~~concern~~ recommended by the Rural Economic Development Initiative
 991 and designated by the Governor, and must be matched each year by
 992 an equivalent amount of nonstate resources.

993 Section 23. Paragraphs (a) and (c) of subsection (2) of
 994 section 288.065, Florida Statutes, are amended to read:

995 288.065 Rural Community Development Revolving Loan Fund.—

996 (2) (a) The program shall provide for long-term loans, loan
 997 guarantees, and loan loss reserves to units of local
 998 governments, or economic development organizations substantially
 999 underwritten by a unit of local government, within counties with
 1000 populations of 75,000 or fewer, or within any county with a
 1001 population of 125,000 or fewer which is contiguous to a county
 1002 with a population of 75,000 or fewer, based on the most recent
 1003 official population estimate as determined under s. 186.901,
 1004 including those residing in incorporated areas and those
 1005 residing in unincorporated areas of the county, or to units of
 1006 local government, or economic development organizations
 1007 substantially underwritten by a unit of local government, within
 1008 a rural area of opportunity ~~critical-economic concern~~.

1009 (c) All repayments of principal and interest shall be
 1010 returned to the loan fund and made available for loans to other
 1011 applicants. However, in a rural area of opportunity ~~critical~~
 1012 ~~economic concern~~ designated by the Governor, and upon approval
 1013 by the department, repayments of principal and interest may be
 1014 retained by the applicant if such repayments are dedicated and
 1015 matched to fund regionally based economic development

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1016 organizations representing the rural area of opportunity
1017 ~~critical economic concern~~.

1018 Section 24. Paragraphs (b), (c), and (e) of subsection (2)
1019 of section 288.0655, Florida Statutes, are amended to read:

1020 288.0655 Rural Infrastructure Fund.—

1021 (2)

1022 (b) To facilitate access of rural communities and rural
1023 areas of opportunity ~~critical economic concern~~ as defined by the
1024 Rural Economic Development Initiative to infrastructure funding
1025 programs of the Federal Government, such as those offered by the
1026 United States Department of Agriculture and the United States
1027 Department of Commerce, and state programs, including those
1028 offered by Rural Economic Development Initiative agencies, and
1029 to facilitate local government or private infrastructure funding
1030 efforts, the department may award grants for up to 30 percent of
1031 the total infrastructure project cost. If an application for
1032 funding is for a catalyst site, as defined in s. 288.0656, the
1033 department may award grants for up to 40 percent of the total
1034 infrastructure project cost. Eligible projects must be related
1035 to specific job-creation or job-retention opportunities.
1036 Eligible projects may also include improving any inadequate
1037 infrastructure that has resulted in regulatory action that
1038 prohibits economic or community growth or reducing the costs to
1039 community users of proposed infrastructure improvements that
1040 exceed such costs in comparable communities. Eligible uses of
1041 funds shall include improvements to public infrastructure for
1042 industrial or commercial sites and upgrades to or development of
1043 public tourism infrastructure. Authorized infrastructure may
1044 include the following public or public-private partnership

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1045 facilities: storm water systems; telecommunications facilities;
1046 broadband facilities; roads or other remedies to transportation
1047 impediments; nature-based tourism facilities; or other physical
1048 requirements necessary to facilitate tourism, trade, and
1049 economic development activities in the community. Authorized
1050 infrastructure may also include publicly or privately owned
1051 self-powered nature-based tourism facilities, publicly owned
1052 telecommunications facilities, and broadband facilities, and
1053 additions to the distribution facilities of the existing natural
1054 gas utility as defined in s. 366.04(3)(c), the existing electric
1055 utility as defined in s. 366.02, or the existing water or
1056 wastewater utility as defined in s. 367.021(12), or any other
1057 existing water or wastewater facility, which owns a gas or
1058 electric distribution system or a water or wastewater system in
1059 this state where:

1060 1. A contribution-in-aid of construction is required to
1061 serve public or public-private partnership facilities under the
1062 tariffs of any natural gas, electric, water, or wastewater
1063 utility as defined herein; and

1064 2. Such utilities as defined herein are willing and able to
1065 provide such service.

1066 (c) To facilitate timely response and induce the location
1067 or expansion of specific job creating opportunities, the
1068 department may award grants for infrastructure feasibility
1069 studies, design and engineering activities, or other
1070 infrastructure planning and preparation activities. Authorized
1071 grants shall be up to \$50,000 for an employment project with a
1072 business committed to create at least 100 jobs; up to \$150,000
1073 for an employment project with a business committed to create at

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1074 least 300 jobs; and up to \$300,000 for a project in a rural area
1075 of opportunity ~~critical economic concern~~. Grants awarded under
1076 this paragraph may be used in conjunction with grants awarded
1077 under paragraph (b), provided that the total amount of both
1078 grants does not exceed 30 percent of the total project cost. In
1079 evaluating applications under this paragraph, the department
1080 shall consider the extent to which the application seeks to
1081 minimize administrative and consultant expenses.

1082 (e) To enable local governments to access the resources
1083 available pursuant to s. 403.973(18), the department may award
1084 grants for surveys, feasibility studies, and other activities
1085 related to the identification and preclearance review of land
1086 which is suitable for preclearance review. Authorized grants
1087 under this paragraph may ~~shall~~ not exceed \$75,000 each, except
1088 in the case of a project in a rural area of opportunity ~~critical~~
1089 ~~economic concern~~, in which case the grant may ~~shall~~ not exceed
1090 \$300,000. Any funds awarded under this paragraph must be matched
1091 at a level of 50 percent with local funds, except that any funds
1092 awarded for a project in a rural area of opportunity ~~critical~~
1093 ~~economic concern~~ must be matched at a level of 33 percent with
1094 local funds. If an application for funding is for a catalyst
1095 site, as defined in s. 288.0656, the requirement for local match
1096 may be waived pursuant to the process in s. 288.06561. In
1097 evaluating applications under this paragraph, the department
1098 shall consider the extent to which the application seeks to
1099 minimize administrative and consultant expenses.

1100 Section 25. Paragraphs (a), (b), and (d) of subsection (2)
1101 and subsection (7) of section 288.0656, Florida Statutes, are
1102 amended to read:

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1103 288.0656 Rural Economic Development Initiative.-

1104 (2) As used in this section, the term:

1105 (a) "Catalyst project" means a business locating or
1106 expanding in a rural area of opportunity ~~critical economic~~
1107 ~~concern~~ to serve as an economic generator of regional
1108 significance for the growth of a regional target industry
1109 cluster. The project must provide capital investment on a scale
1110 significant enough to affect the entire region and result in the
1111 development of high-wage and high-skill jobs.

1112 (b) "Catalyst site" means a parcel or parcels of land
1113 within a rural area of opportunity ~~critical economic concern~~
1114 that has been prioritized as a geographic site for economic
1115 development through partnerships with state, regional, and local
1116 organizations. The site must be reviewed by REDI and approved by
1117 the department for the purposes of locating a catalyst project.

1118 (d) "Rural area of opportunity ~~critical economic concern~~"
1119 means a rural community, or a region composed of rural
1120 communities, designated by the Governor, which ~~that~~ has been
1121 adversely affected by an extraordinary economic event, severe or
1122 chronic distress, or a natural disaster or that presents a
1123 unique economic development opportunity of regional impact.

1124 (7) (a) REDI may recommend to the Governor up to three rural
1125 areas of opportunity ~~critical economic concern~~. The Governor may
1126 by executive order designate up to three rural areas of
1127 opportunity ~~critical economic concern~~ which will establish these
1128 areas as priority assignments for REDI as well as to allow the
1129 Governor, acting through REDI, to waive criteria, requirements,
1130 or similar provisions of any economic development incentive.
1131 Such incentives shall include, but are not ~~be~~ limited to, + the

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1132 Qualified Target Industry Tax Refund Program under s. 288.106,
1133 the Quick Response Training Program under s. 288.047, the Quick
1134 Response Training Program for participants in the welfare
1135 transition program under s. 288.047(8), transportation projects
1136 under s. 339.2821, the brownfield redevelopment bonus refund
1137 under s. 288.107, and the rural job tax credit program under ss.
1138 212.098 and 220.1895.

1139 (b) Designation as a rural area of opportunity ~~critical~~
1140 ~~economic concern~~ under this subsection shall be contingent upon
1141 the execution of a memorandum of agreement among the department;
1142 the governing body of the county; and the governing bodies of
1143 any municipalities to be included within a rural area of
1144 opportunity ~~critical economic concern~~. Such agreement shall
1145 specify the terms and conditions of the designation, including,
1146 but not limited to, the duties and responsibilities of the
1147 county and any participating municipalities to take actions
1148 designed to facilitate the retention and expansion of existing
1149 businesses in the area, as well as the recruitment of new
1150 businesses to the area.

1151 (c) Each rural area of opportunity ~~critical economic~~
1152 ~~concern~~ may designate catalyst projects, provided that each
1153 catalyst project is specifically recommended by REDI, identified
1154 as a catalyst project by Enterprise Florida, Inc., and confirmed
1155 as a catalyst project by the department. All state agencies and
1156 departments shall use all available tools and resources to the
1157 extent permissible by law to promote the creation and
1158 development of each catalyst project and the development of
1159 catalyst sites.

1160 Section 26. Paragraph (a) of subsection (3) of section

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1161 288.1088, Florida Statutes, is amended to read:

1162 288.1088 Quick Action Closing Fund.—

1163 (3) (a) The department and Enterprise Florida, Inc., shall
 1164 jointly review applications pursuant to s. 288.061 and determine
 1165 the eligibility of each project consistent with the criteria in
 1166 subsection (2). Waiver of these criteria may be considered under
 1167 the following criteria:

1168 1. Based on extraordinary circumstances;

1169 2. In order to mitigate the impact of the conclusion of the
 1170 space shuttle program; or

1171 3. In rural areas of opportunity ~~critical economic concern~~
 1172 if the project would significantly benefit the local or regional
 1173 economy.

1174 Section 27. Paragraphs (b), (c), and (d) of subsection (4)
 1175 of section 288.1089, Florida Statutes, are amended to read:

1176 288.1089 Innovation Incentive Program.—

1177 (4) To qualify for review by the department, the applicant
 1178 must, at a minimum, establish the following to the satisfaction
 1179 of the department:

1180 (b) A research and development project must:

1181 1. Serve as a catalyst for an emerging or evolving
 1182 technology cluster.

1183 2. Demonstrate a plan for significant higher education
 1184 collaboration.

1185 3. Provide the state, at a minimum, a cumulative break-even
 1186 economic benefit within a 20-year period.

1187 4. Be provided with a one-to-one match from the local
 1188 community. The match requirement may be reduced or waived in
 1189 rural areas of opportunity ~~critical economic concern~~ or reduced

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1190 in rural areas, brownfield areas, and enterprise zones.

1191 (c) An innovation business project in this state, other
1192 than a research and development project, must:

1193 1.a. Result in the creation of at least 1,000 direct, new
1194 jobs at the business; or

1195 b. Result in the creation of at least 500 direct, new jobs
1196 if the project is located in a rural area, a brownfield area, or
1197 an enterprise zone.

1198 2. Have an activity or product that is within an industry
1199 that is designated as a target industry business under s.
1200 288.106 or a designated sector under s. 288.108.

1201 3.a. Have a cumulative investment of at least \$500 million
1202 within a 5-year period; or

1203 b. Have a cumulative investment that exceeds \$250 million
1204 within a 10-year period if the project is located in a rural
1205 area, brownfield area, or an enterprise zone.

1206 4. Be provided with a one-to-one match from the local
1207 community. The match requirement may be reduced or waived in
1208 rural areas of opportunity ~~critical economic concern~~ or reduced
1209 in rural areas, brownfield areas, and enterprise zones.

1210 (d) For an alternative and renewable energy project in this
1211 state, the project must:

1212 1. Demonstrate a plan for significant collaboration with an
1213 institution of higher education;

1214 2. Provide the state, at a minimum, a cumulative break-even
1215 economic benefit within a 20-year period;

1216 3. Include matching funds provided by the applicant or
1217 other available sources. The match requirement may be reduced or
1218 waived in rural areas of opportunity ~~critical economic concern~~

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1219 or reduced in rural areas, brownfield areas, and enterprise
1220 zones;

1221 4. Be located in this state; and

1222 5. Provide at least 35 direct, new jobs that pay an
1223 estimated annual average wage that equals at least 130 percent
1224 of the average private sector wage.

1225 Section 28. Paragraph (d) of subsection (6) of section
1226 290.0055, Florida Statutes, is amended to read:

1227 290.0055 Local nominating procedure.—

1228 (6)

1229 (d)1. The governing body of a jurisdiction which has
1230 nominated an application for an enterprise zone that is at least
1231 15 square miles and less than 20 square miles and includes a
1232 portion of the state designated as a rural area of opportunity
1233 ~~critical-economic-concern~~ under s. 288.0656(7) may apply to the
1234 department to expand the boundary of the existing enterprise
1235 zone by not more than 3 square miles.

1236 2. The governing body of a jurisdiction which has nominated
1237 an application for an enterprise zone that is at least 20 square
1238 miles and includes a portion of the state designated as a rural
1239 area of opportunity ~~critical-economic-concern~~ under s.
1240 288.0656(7) may apply to the department to expand the boundary
1241 of the existing enterprise zone by not more than 5 square miles.

1242 3. An application to expand the boundary of an enterprise
1243 zone under this paragraph must be submitted by December 31,
1244 2013.

1245 4. Notwithstanding the area limitations specified in
1246 subsection (4), the department may approve the request for a
1247 boundary amendment if the area continues to satisfy the

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1248 remaining requirements of this section.

1249 5. The department shall establish the initial effective
1250 date of an enterprise zone designated under this paragraph.

1251 Section 29. Paragraph (c) of subsection (4) of section
1252 339.2819, Florida Statutes, is amended to read:

1253 339.2819 Transportation Regional Incentive Program.—

1254 (4)

1255 (c) The department shall give priority to projects that:

1256 1. Provide connectivity to the Strategic Intermodal System
1257 developed under s. 339.64.

1258 2. Support economic development and the movement of goods
1259 in rural areas of opportunity ~~critical economic concern~~
1260 designated under s. 288.0656(7).

1261 3. Are subject to a local ordinance that establishes
1262 corridor management techniques, including access management
1263 strategies, right-of-way acquisition and protection measures,
1264 appropriate land use strategies, zoning, and setback
1265 requirements for adjacent land uses.

1266 4. Improve connectivity between military installations and
1267 the Strategic Highway Network or the Strategic Rail Corridor
1268 Network.

1269

1270 The department shall also consider the extent to which local
1271 matching funds are available to be committed to the project.

1272 Section 30. Paragraph (b) of subsection (5) of section
1273 339.63, Florida Statutes, is amended to read:

1274 339.63 System facilities designated; additions and
1275 deletions.—

1276 (5)

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1277 (b) A facility designated part of the Strategic Intermodal
1278 System pursuant to paragraph (a) that is within the jurisdiction
1279 of a local government that maintains a transportation
1280 concurrency system shall receive a waiver of transportation
1281 concurrency requirements applicable to Strategic Intermodal
1282 System facilities in order to accommodate any development at the
1283 facility which occurs pursuant to a building permit issued on or
1284 before December 31, 2017, but only if such facility is located:

1285 1. Within an area designated pursuant to s. 288.0656(7) as
1286 a rural area of opportunity ~~critical economic concern~~;

1287 2. Within a rural enterprise zone as defined in s.
1288 290.004(5); or

1289 3. Within 15 miles of the boundary of a rural area of
1290 opportunity ~~critical economic concern~~ or a rural enterprise
1291 zone.

1292 Section 31. Paragraph (c) of subsection (3) of section
1293 373.4595, Florida Statutes, is amended to read:

1294 373.4595 Northern Everglades and Estuaries Protection
1295 Program.—

1296 (3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—A
1297 protection program for Lake Okeechobee that achieves phosphorus
1298 load reductions for Lake Okeechobee shall be immediately
1299 implemented as specified in this subsection. The program shall
1300 address the reduction of phosphorus loading to the lake from
1301 both internal and external sources. Phosphorus load reductions
1302 shall be achieved through a phased program of implementation.
1303 Initial implementation actions shall be technology-based, based
1304 upon a consideration of both the availability of appropriate
1305 technology and the cost of such technology, and shall include

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1306 phosphorus reduction measures at both the source and the
1307 regional level. The initial phase of phosphorus load reductions
1308 shall be based upon the district's Technical Publication 81-2
1309 and the district's WOD program, with subsequent phases of
1310 phosphorus load reductions based upon the total maximum daily
1311 loads established in accordance with s. 403.067. In the
1312 development and administration of the Lake Okeechobee Watershed
1313 Protection Program, the coordinating agencies shall maximize
1314 opportunities provided by federal cost-sharing programs and
1315 opportunities for partnerships with the private sector.

1316 (c) *Lake Okeechobee Watershed Phosphorus Control Program.*—
1317 The Lake Okeechobee Watershed Phosphorus Control Program is
1318 designed to be a multifaceted approach to reducing phosphorus
1319 loads by improving the management of phosphorus sources within
1320 the Lake Okeechobee watershed through implementation of
1321 regulations and best management practices, development and
1322 implementation of improved best management practices,
1323 improvement and restoration of the hydrologic function of
1324 natural and managed systems, and utilization of alternative
1325 technologies for nutrient reduction. The coordinating agencies
1326 shall facilitate the application of federal programs that offer
1327 opportunities for water quality treatment, including
1328 preservation, restoration, or creation of wetlands on
1329 agricultural lands.

1330 1. Agricultural nonpoint source best management practices,
1331 developed in accordance with s. 403.067 and designed to achieve
1332 the objectives of the Lake Okeechobee Watershed Protection
1333 Program, shall be implemented on an expedited basis. The
1334 coordinating agencies shall develop an interagency agreement

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1335 pursuant to ss. 373.046 and 373.406(5) that assures the
1336 development of best management practices that complement
1337 existing regulatory programs and specifies how those best
1338 management practices are implemented and verified. The
1339 interagency agreement shall address measures to be taken by the
1340 coordinating agencies during any best management practice
1341 reevaluation performed pursuant to sub-subparagraph d. The
1342 department shall use best professional judgment in making the
1343 initial determination of best management practice effectiveness.

1344 a. As provided in s. 403.067(7)(c), the Department of
1345 Agriculture and Consumer Services, in consultation with the
1346 department, the district, and affected parties, shall initiate
1347 rule development for interim measures, best management
1348 practices, conservation plans, nutrient management plans, or
1349 other measures necessary for Lake Okeechobee watershed total
1350 maximum daily load reduction. The rule shall include thresholds
1351 for requiring conservation and nutrient management plans and
1352 criteria for the contents of such plans. Development of
1353 agricultural nonpoint source best management practices shall
1354 initially focus on those priority basins listed in subparagraph
1355 (b)1. The Department of Agriculture and Consumer Services, in
1356 consultation with the department, the district, and affected
1357 parties, shall conduct an ongoing program for improvement of
1358 existing and development of new interim measures or best
1359 management practices for the purpose of adoption of such
1360 practices by rule. The Department of Agriculture and Consumer
1361 Services shall work with the University of Florida's Institute
1362 of Food and Agriculture Sciences to review and, where
1363 appropriate, develop revised nutrient application rates for all

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1364 agricultural soil amendments in the watershed.

1365 b. Where agricultural nonpoint source best management
1366 practices or interim measures have been adopted by rule of the
1367 Department of Agriculture and Consumer Services, the owner or
1368 operator of an agricultural nonpoint source addressed by such
1369 rule shall either implement interim measures or best management
1370 practices or demonstrate compliance with the district's WOD
1371 program by conducting monitoring prescribed by the department or
1372 the district. Owners or operators of agricultural nonpoint
1373 sources who implement interim measures or best management
1374 practices adopted by rule of the Department of Agriculture and
1375 Consumer Services shall be subject to the provisions of s.
1376 403.067(7). The Department of Agriculture and Consumer Services,
1377 in cooperation with the department and the district, shall
1378 provide technical and financial assistance for implementation of
1379 agricultural best management practices, subject to the
1380 availability of funds.

1381 c. The district or department shall conduct monitoring at
1382 representative sites to verify the effectiveness of agricultural
1383 nonpoint source best management practices.

1384 d. Where water quality problems are detected for
1385 agricultural nonpoint sources despite the appropriate
1386 implementation of adopted best management practices, the
1387 Department of Agriculture and Consumer Services, in consultation
1388 with the other coordinating agencies and affected parties, shall
1389 institute a reevaluation of the best management practices and
1390 make appropriate changes to the rule adopting best management
1391 practices.

1392 2. Nonagricultural nonpoint source best management

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1393 practices, developed in accordance with s. 403.067 and designed
1394 to achieve the objectives of the Lake Okeechobee Watershed
1395 Protection Program, shall be implemented on an expedited basis.
1396 The department and the district shall develop an interagency
1397 agreement pursuant to ss. 373.046 and 373.406(5) that assures
1398 the development of best management practices that complement
1399 existing regulatory programs and specifies how those best
1400 management practices are implemented and verified. The
1401 interagency agreement shall address measures to be taken by the
1402 department and the district during any best management practice
1403 reevaluation performed pursuant to sub-subparagraph d.

1404 a. The department and the district are directed to work
1405 with the University of Florida's Institute of Food and
1406 Agricultural Sciences to develop appropriate nutrient
1407 application rates for all nonagricultural soil amendments in the
1408 watershed. As provided in s. 403.067(7)(c), the department, in
1409 consultation with the district and affected parties, shall
1410 develop interim measures, best management practices, or other
1411 measures necessary for Lake Okeechobee watershed total maximum
1412 daily load reduction. Development of nonagricultural nonpoint
1413 source best management practices shall initially focus on those
1414 priority basins listed in subparagraph (b)1. The department, the
1415 district, and affected parties shall conduct an ongoing program
1416 for improvement of existing and development of new interim
1417 measures or best management practices. The district shall adopt
1418 technology-based standards under the district's WOD program for
1419 nonagricultural nonpoint sources of phosphorus. Nothing in this
1420 sub-subparagraph shall affect the authority of the department or
1421 the district to adopt basin-specific criteria under this part to

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1422 prevent harm to the water resources of the district.

1423 b. Where nonagricultural nonpoint source best management
1424 practices or interim measures have been developed by the
1425 department and adopted by the district, the owner or operator of
1426 a nonagricultural nonpoint source shall implement interim
1427 measures or best management practices and be subject to the
1428 provisions of s. 403.067(7). The department and district shall
1429 provide technical and financial assistance for implementation of
1430 nonagricultural nonpoint source best management practices,
1431 subject to the availability of funds.

1432 c. The district or the department shall conduct monitoring
1433 at representative sites to verify the effectiveness of
1434 nonagricultural nonpoint source best management practices.

1435 d. Where water quality problems are detected for
1436 nonagricultural nonpoint sources despite the appropriate
1437 implementation of adopted best management practices, the
1438 department and the district shall institute a reevaluation of
1439 the best management practices.

1440 3. The provisions of subparagraphs 1. and 2. may ~~shall~~ not
1441 preclude the department or the district from requiring
1442 compliance with water quality standards or with current best
1443 management practices requirements set forth in any applicable
1444 regulatory program authorized by law for the purpose of
1445 protecting water quality. Additionally, subparagraphs 1. and 2.
1446 are applicable only to the extent that they do not conflict with
1447 any rules adopted ~~promulgated~~ by the department that are
1448 necessary to maintain a federally delegated or approved program.

1449 4. Projects that reduce the phosphorus load originating
1450 from domestic wastewater systems within the Lake Okeechobee

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1451 watershed shall be given funding priority in the department's
1452 revolving loan program under s. 403.1835. The department shall
1453 coordinate and provide assistance to those local governments
1454 seeking financial assistance for such priority projects.

1455 5. Projects that make use of private lands, or lands held
1456 in trust for Indian tribes, to reduce nutrient loadings or
1457 concentrations within a basin by one or more of the following
1458 methods: restoring the natural hydrology of the basin, restoring
1459 wildlife habitat or impacted wetlands, reducing peak flows after
1460 storm events, increasing aquifer recharge, or protecting range
1461 and timberland from conversion to development, are eligible for
1462 grants available under this section from the coordinating
1463 agencies. For projects of otherwise equal priority, special
1464 funding priority will be given to those projects that make best
1465 use of the methods outlined above that involve public-private
1466 partnerships or that obtain federal match money. Preference
1467 ranking above the special funding priority will be given to
1468 projects located in a rural area of opportunity ~~critical~~
1469 ~~economic concern~~ designated by the Governor. Grant applications
1470 may be submitted by any person or tribal entity, and eligible
1471 projects may include, but are not limited to, the purchase of
1472 conservation and flowage easements, hydrologic restoration of
1473 wetlands, creating treatment wetlands, development of a
1474 management plan for natural resources, and financial support to
1475 implement a management plan.

1476 6.a. The department shall require all entities disposing of
1477 domestic wastewater residuals within the Lake Okeechobee
1478 watershed and the remaining areas of Okeechobee, Glades, and
1479 Hendry Counties to develop and submit to the department an

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1480 agricultural use plan that limits applications based upon
1481 phosphorus loading. By July 1, 2005, phosphorus concentrations
1482 originating from these application sites may ~~shall~~ not exceed
1483 the limits established in the district's WOD program. After
1484 December 31, 2007, the department may not authorize the disposal
1485 of domestic wastewater residuals within the Lake Okeechobee
1486 watershed unless the applicant can affirmatively demonstrate
1487 that the phosphorus in the residuals will not add to phosphorus
1488 loadings in Lake Okeechobee or its tributaries. This
1489 demonstration shall be based on achieving a net balance between
1490 phosphorus imports relative to exports on the permitted
1491 application site. Exports shall include only phosphorus removed
1492 from the Lake Okeechobee watershed through products generated on
1493 the permitted application site. This prohibition does not apply
1494 to Class AA residuals that are marketed and distributed as
1495 fertilizer products in accordance with department rule.

1496 b. Private and government-owned utilities within Monroe,
1497 Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian
1498 River, Okeechobee, Highlands, Hendry, and Glades Counties that
1499 dispose of wastewater residual sludge from utility operations
1500 and septic removal by land spreading in the Lake Okeechobee
1501 watershed may use a line item on local sewer rates to cover
1502 wastewater residual treatment and disposal if such disposal and
1503 treatment is done by approved alternative treatment methodology
1504 at a facility located within the areas designated by the
1505 Governor as rural areas of opportunity ~~critical economic concern~~
1506 pursuant to s. 288.0656. This additional line item is an
1507 environmental protection disposal fee above the present sewer
1508 rate and may ~~shall~~ not be considered a part of the present sewer

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1509 rate to customers, notwithstanding provisions to the contrary in
1510 chapter 367. The fee shall be established by the county
1511 commission or its designated assignee in the county in which the
1512 alternative method treatment facility is located. The fee shall
1513 be calculated to be no higher than that necessary to recover the
1514 facility's prudent cost of providing the service. Upon request
1515 by an affected county commission, the Florida Public Service
1516 Commission will provide assistance in establishing the fee.
1517 Further, for utilities and utility authorities that use the
1518 additional line item environmental protection disposal fee, such
1519 fee may ~~shall~~ not be considered a rate increase under the rules
1520 of the Public Service Commission and shall be exempt from such
1521 rules. Utilities using the provisions of this section may
1522 immediately include in their sewer invoicing the new
1523 environmental protection disposal fee. Proceeds from this
1524 environmental protection disposal fee shall be used for
1525 treatment and disposal of wastewater residuals, including any
1526 treatment technology that helps reduce the volume of residuals
1527 that require final disposal, but such proceeds may ~~shall~~ not be
1528 used for transportation or shipment costs for disposal or any
1529 costs relating to the land application of residuals in the Lake
1530 Okeechobee watershed.

1531 c. No less frequently than once every 3 years, the Florida
1532 Public Service Commission or the county commission through the
1533 services of an independent auditor shall perform a financial
1534 audit of all facilities receiving compensation from an
1535 environmental protection disposal fee. The Florida Public
1536 Service Commission or the county commission through the services
1537 of an independent auditor shall also perform an audit of the

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1538 methodology used in establishing the environmental protection
1539 disposal fee. The Florida Public Service Commission or the
1540 county commission shall, within 120 days after completion of an
1541 audit, file the audit report with the President of the Senate
1542 and the Speaker of the House of Representatives and shall
1543 provide copies to the county commissions of the counties set
1544 forth in sub-subparagraph b. The books and records of any
1545 facilities receiving compensation from an environmental
1546 protection disposal fee shall be open to the Florida Public
1547 Service Commission and the Auditor General for review upon
1548 request.

1549 7. The Department of Health shall require all entities
1550 disposing of septage within the Lake Okeechobee watershed to
1551 develop and submit to that agency an agricultural use plan that
1552 limits applications based upon phosphorus loading. By July 1,
1553 2005, phosphorus concentrations originating from these
1554 application sites may ~~shall~~ not exceed the limits established in
1555 the district's WOD program.

1556 8. The Department of Agriculture and Consumer Services
1557 shall initiate rulemaking requiring entities within the Lake
1558 Okeechobee watershed which land-apply animal manure to develop
1559 resource management system level conservation plans, according
1560 to United States Department of Agriculture criteria, which limit
1561 such application. Such rules may include criteria and thresholds
1562 for the requirement to develop a conservation or nutrient
1563 management plan, requirements for plan approval, and
1564 recordkeeping requirements.

1565 9. The district, the department, or the Department of
1566 Agriculture and Consumer Services, as appropriate, shall

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1567 implement those alternative nutrient reduction technologies
1568 determined to be feasible pursuant to subparagraph (d)6.

1569 Section 32. Paragraph (e) of subsection (2) and paragraph
1570 (b) of subsection (26) of section 380.06, Florida Statutes, are
1571 amended to read:

1572 380.06 Developments of regional impact.—

1573 (2) STATEWIDE GUIDELINES AND STANDARDS.—

1574 (e) With respect to residential, hotel, motel, office, and
1575 retail developments, the applicable guidelines and standards
1576 shall be increased by 50 percent in urban central business
1577 districts and regional activity centers of jurisdictions whose
1578 local comprehensive plans are in compliance with part II of
1579 chapter 163. With respect to multiuse developments, the
1580 applicable individual use guidelines and standards for
1581 residential, hotel, motel, office, and retail developments and
1582 multiuse guidelines and standards shall be increased by 100
1583 percent in urban central business districts and regional
1584 activity centers of jurisdictions whose local comprehensive
1585 plans are in compliance with part II of chapter 163, if one land
1586 use of the multiuse development is residential and amounts to
1587 not less than 35 percent of the jurisdiction's applicable
1588 residential threshold. With respect to resort or convention
1589 hotel developments, the applicable guidelines and standards
1590 shall be increased by 150 percent in urban central business
1591 districts and regional activity centers of jurisdictions whose
1592 local comprehensive plans are in compliance with part II of
1593 chapter 163 and where the increase is specifically for a
1594 proposed resort or convention hotel located in a county with a
1595 population greater than 500,000 and the local government

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1596 specifically designates that the proposed resort or convention
1597 hotel development will serve an existing convention center of
1598 more than 250,000 gross square feet built before ~~prior to~~ July
1599 1, 1992. The applicable guidelines and standards shall be
1600 increased by 150 percent for development in any area designated
1601 by the Governor as a rural area of opportunity ~~critical economic~~
1602 ~~concern~~ pursuant to s. 288.0656 during the effectiveness of the
1603 designation.

1604 (26) ABANDONMENT OF DEVELOPMENTS OF REGIONAL IMPACT.—

1605 (b) Upon receipt of written confirmation from the state
1606 land planning agency that any required mitigation applicable to
1607 completed development has occurred, an industrial development of
1608 regional impact located within the coastal high-hazard area of a
1609 rural area of opportunity ~~county of economic concern~~ which was
1610 approved before ~~prior to~~ the adoption of the local government's
1611 comprehensive plan required under s. 163.3167 and which plan's
1612 future land use map and zoning designates the land use for the
1613 development of regional impact as commercial may be unilaterally
1614 abandoned without the need to proceed through the process
1615 described in paragraph (a) if the developer or owner provides a
1616 notice of abandonment to the local government and records such
1617 notice with the applicable clerk of court. Abandonment shall be
1618 deemed to have occurred upon the recording of the notice. All
1619 development following abandonment shall be fully consistent with
1620 the current comprehensive plan and applicable zoning.

1621 Section 33. Paragraph (g) of subsection (3) of section
1622 380.0651, Florida Statutes, is amended to read:

1623 380.0651 Statewide guidelines and standards.—

1624 (3) The following statewide guidelines and standards shall

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1625 be applied in the manner described in s. 380.06(2) to determine
1626 whether the following developments shall be required to undergo
1627 development-of-regional-impact review:

1628 (g) *Residential development.*—~~A~~ ~~No~~ rule may not be adopted
1629 concerning residential developments which treats a residential
1630 development in one county as being located in a less populated
1631 adjacent county unless more than 25 percent of the development
1632 is located within 2 ~~or less~~ miles or less of the less populated
1633 adjacent county. The residential thresholds of adjacent counties
1634 with less population and a lower threshold may ~~shall~~ not be
1635 controlling on any development wholly located within areas
1636 designated as rural areas of opportunity ~~critical economic~~
1637 ~~concern~~.

1638 Section 34. Paragraph (b) of subsection (2) of section
1639 985.686, Florida Statutes, is amended to read:

1640 985.686 Shared county and state responsibility for juvenile
1641 detention.—

1642 (2) As used in this section, the term:

1643 (b) "Fiscally constrained county" means a county within a
1644 rural area of opportunity ~~critical economic concern~~ as
1645 designated by the Governor pursuant to s. 288.0656 or each
1646 county for which the value of a mill will raise no more than \$5
1647 million in revenue, based on the certified school taxable value
1648 certified pursuant to s. 1011.62(4)(a)1.a., from the previous
1649 July 1.

1650 Section 35. Subsection (2) of section 1011.76, Florida
1651 Statutes, is amended to read:

1652 1011.76 Small School District Stabilization Program.—

1653 (2) In order to participate in this program, a school

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1654 district must be located in a rural area of opportunity ~~critical~~
1655 ~~economic concern~~ designated by the Executive Office of the
1656 Governor, and the district school board must submit a resolution
1657 to the Department of Economic Opportunity requesting
1658 participation in the program. A rural area of opportunity
1659 ~~critical economic concern~~ must be a rural community, or a region
1660 composed of such, that has been adversely affected by an
1661 extraordinary economic event or a natural disaster or that
1662 presents a unique economic development concern or opportunity of
1663 regional impact. The resolution must be accompanied by ~~with~~
1664 documentation of the economic conditions in the community and~~r~~
1665 provide information indicating the negative impact of these
1666 conditions on the school district's financial stability, and the
1667 school district must participate in a best financial management
1668 practices review to determine potential efficiencies that could
1669 be implemented to reduce program costs in the district.

1670 Section 36. Paragraph (a) of subsection (4) of section
1671 215.425, Florida Statutes, is amended to read:

1672 215.425 Extra compensation claims prohibited; bonuses;
1673 severance pay.—

1674 (4) (a) On or after July 1, 2011, a unit of government that
1675 enters into a contract or employment agreement, or renewal or
1676 renegotiation of an existing contract or employment agreement,
1677 that contains a provision for severance pay with an officer,
1678 agent, employee, or contractor must include the following
1679 provisions in the contract:

1680 1. A requirement that severance pay provided may not exceed
1681 an amount greater than 20 weeks of compensation.

1682 2. A prohibition of provision of severance pay when the

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1683 officer, agent, employee, or contractor has been fired for
1684 misconduct, as defined in s. 443.036(29) ~~s. 443.036(30)~~, by the
1685 unit of government.

1686 Section 37. Paragraph (f) of subsection (13) of section
1687 443.1216, Florida Statutes, is amended to read:

1688 443.1216 Employment.—Employment, as defined in s. 443.036,
1689 is subject to this chapter under the following conditions:

1690 (13) The following are exempt from coverage under this
1691 chapter:

1692 (f) Service performed in the employ of a public employer as
1693 defined in s. 443.036, except as provided in subsection (2), and
1694 service performed in the employ of an instrumentality of a
1695 public employer as described in s. 443.036(35)(b) or (c) ~~s.~~
1696 ~~443.036(36)(b) or (c)~~, to the extent that the instrumentality is
1697 immune under the United States Constitution from the tax imposed
1698 by s. 3301 of the Internal Revenue Code for that service.

1699 Section 38. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic DEO

Bill Number SB 1634
(if applicable)

Name David Cruz

Amendment Barcode _____
(if applicable)

Job Title Assistant General Counsel

Address P.O. Box 1757
Street
Tallahassee FL 32302
City State Zip

Phone 701-3078

E-mail _____

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic Department of Economic Opportunity Bill Number 1634
(if applicable)

Name Bill Wilson Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 107 E. Madison Street Phone 850-245-7116

Tallahassee FL 32399 E-mail bill.wilson@deo.myflorida.com
City State Zip

Speaking: For Against Information

Representing FL Department of Economic Opportunity

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/2014

Meeting Date

Topic Department of Economic Opportunity Bill Number 1634
(if applicable)

Name Leticia M Adams Amendment Barcode _____
(if applicable)

Job Title Senior Policy Director

Address 136 South Bronough Street Phone 850-544-6866

Street

Tallahassee Fl 32301

City

State

Zip

E-mail ladams@flchamber.com

Speaking: For Against Information

Representing Florida Chamber of Commerce

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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 6, 2014

I respectfully request that **Senate Bill #1634**, relating to Department of Economic Opportunity, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

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 Community Affairs

BILL: CS/SB 1318

INTRODUCER: Community Affairs Committee and Senator Evers

SUBJECT: Public Records/Public-private Partnerships

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 creates public records and public meetings exemptions for materials related to unsolicited proposals and held by a responsible public entity. The bill provides conditions under which the public records exemption will terminate.

The bill provides a definition of “proprietary confidential business information.”

The bill states that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reenacted by the Legislature.

The bill provides statements of public necessity for the exemptions.

II. Present Situation:

Public Access

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records and public meetings to a constitutional level.

Paragraph (a) and (b) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Public-Private Partnerships and the Unsolicited Proposal Procurement Model

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.² In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³

Chapter 287, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. Section 287.05712, F.S., authorizes responsible public entities⁴ to enter

¹ See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on March 8, 2014).

² See generally The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: <http://www.ncppp.org/ppp-basics/7-keys/> (last visited on March 8, 2014).

³ *Id.*

⁴ Section 287.05712(1)(j), F.S., defines “responsible public entity” as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

into P3s for specified qualifying projects⁵ if the public entity determines the project is in the public's best interest.⁶

There are different types of PPPs with varying levels of private sector involvement, one of which is the Unsolicited Proposal Procurement Model (UPPM). The UPPM allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁷ Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.⁸ A local government's "acceptance" of a proposal results in the publishing of a notice to other prospective proposers for the project.⁹ These other proposers have a certain amount of time in which to submit a competing proposal, after which the local government considers and ranks all of the proposals, including the initial proposal that began the process.¹⁰

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:¹¹

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

⁵ Section 287.05712(1)(i), F.S., defines "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

⁶ Section 287.05712(5), F.S.

⁷ See *Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 2.

⁸ *Id.*

⁹ Section 287.05712(4)(b), F.S.

¹⁰ Section 287.05712(4)(b) and (6)(c), F.S.

¹¹ Section 287.05712(5), F.S.

The UPPM allows local governments to engage in a PPP without incurring the costs associated with preparation of detailed proposal solicitation documents.¹² Use of the UPPM results in a faster review and procurement process while still allowing for the receipt of competitive project proposals.

Public Record Exemption for Records Related to a Competitive Solicitation

Only the Legislature may create an exemption to public records requirements.¹³ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁴ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

Current law does not provide a public record exemption for unsolicited proposals submitted to responsible public entities. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt¹⁷ from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.¹⁸ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new

¹² Fumero at 2.

¹³ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c).

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ Section 119.071(1)(b), F.S.

¹⁹ *Id.*

exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

III. Effect of Proposed Changes:

Section 1 makes an unsolicited proposal received by a responsible public entity confidential and exempt from the public records laws until that responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision. The bill states that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project the responsible public entity does not intend to accept.

The bill provides a definition for “proprietary confidential business information” (PCBI). If an unsolicited proposal contains information designated as PCBI by the private entity submitting the unsolicited proposal, that information shall remain confidential and exempt indefinitely.

The bill states that portions of public meetings of a responsible public entity at which information related to an unsolicited proposal is discussed are confidential and exempt from the public meetings laws. The bill requires exempt portions of meetings to be recorded and transcribed. Portions of public meetings which reveal PCBI are confidential and exempt.

The bill states that the subsection is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reenacted by the Legislature.

Section 2 of the bill provides statements of public necessity for the public records and public meetings exemptions.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates both a public record exemption and a public meetings exemption for materials related to an unsolicited proposal; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates both a public record exemption and a public meetings exemption for records related to an unsolicited proposal; thus, it includes public necessity statements.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the records related to an unsolicited proposal. Furthermore, the bill restricts the timeframe of the exemption to that period most likely to be damaging (and therefore most discouraging) to a private party that might otherwise submit an unsolicited proposal.

The bill also creates a public meetings exemption for portions of a public meeting related to an unsolicited proposal that is confidential and exempt. The exemption only applies to those portions of meetings that are necessary to preserve the confidentiality of the information. Furthermore, the bill requires such portions to be transcribed and recorded, including the times of commencement and termination of the meeting and the names of all persons speaking.

As such, the exemptions do not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill exempts records and meetings related to unsolicited proposals to engage in a PPP, which may encourage more private parties to enter into such agreements.

C. Government Sector Impact:

The bill may encourage the formation of more PPPs. One of the primary advantages of PPPs is their tendency to encourage a reduction in the costs of project implementation. Therefore, the bill may reduce the financial burden on the state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712 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 Community Affairs on March 19, 2014:**

- Defines “proprietary confidential business information” (PCBI).
- Provides that an unsolicited proposal is confidential and exempt until the responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision.
- Provides that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project which the responsible public entity does not intend to enter into an agreement for. However, if the proposal contains information designated as PCBI by the private party, then that information will remain confidential and exempt indefinitely.
- Provides that portions of meetings at which the information from an unsolicited proposal is discussed are exempt from the public meetings law.
- Provides that the exempt portions of public meetings will nonetheless be transcribed.
- Provides that a portion of a transcript that reveals PCBI is confidential and exempt.
- Provides that the subsection is subject to the OGSR.
- Provides statements of public necessity.

B. Amendments:

None.

By Senator Evers

2-00760-14

20141318__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 287.05712, F.S., relating to public-private
4 partnerships for the upgrade of public facilities and
5 infrastructure; providing an exemption from public
6 records requirements for unsolicited proposals held by
7 a responsible public entity for a specified period;
8 providing for future review and repeal of the
9 exemption under the Open Government Sunset Review Act;
10 providing a statement of public necessity; providing
11 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Present subsections (14) and (15) of section
16 287.05712, Florida Statutes, are redesignated as subsections
17 (15) and (16), respectively, and a new subsection (14) is added
18 to that section, to read:

19 287.05712 Public-private partnerships.—

20 (14) PUBLIC RECORDS EXEMPTION.—

21 (a) An unsolicited proposal held by a responsible public
22 entity under this section is exempt from s. 119.07(1) and s.
23 24(a), Art. I of the State Constitution until such time that the
24 responsible public entity receives, opens, and ranks the
25 proposals as set forth in paragraph (6)(c).

26 (b) If a responsible public entity rejects all proposals
27 submitted for a qualifying project as provided in paragraph
28 (6)(c) and the entity concurrently provides notice of its intent
29 to seek additional proposals for the qualifying project, the

2-00760-14

20141318

30 rejected unsolicited proposal remains exempt from s. 119.07(1)
31 and s. 24(a), Art. I of the State Constitution until such time
32 that the responsible public entity solicits bids and provides
33 notice of a decision or intended decision. An unsolicited
34 proposal is not exempt for more than 12 months after the
35 responsible public entity rejects all proposals submitted as
36 provided in paragraph (6) (c).

37 (c) This subsection is subject to the Open Government
38 Sunset Review Act in accordance with s. 119.15 and shall stand
39 repealed on October 2, 2019, unless reviewed and saved from
40 repeal through reenactment by the Legislature.

41 Section 2. The Legislature finds that it is a public
42 necessity that an unsolicited proposal held by a responsible
43 public entity pursuant to s. 287.05712, Florida Statutes, be
44 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
45 Article I of the State Constitution until such time that the
46 responsible public entity receives, opens, and ranks the
47 proposals as set forth in s. 287.05712(6)(c), Florida Statutes,
48 or, if the responsible public entity rejects all proposals,
49 until the responsible public entity solicits bids for the
50 qualifying project and provides notice of its decision or
51 intended decision. An unsolicited proposal is not exempt for
52 more than 12 months after all proposals are rejected. The
53 disclosure of information in an unsolicited proposal, such as
54 financing mechanisms and terms, formulas, and designs, could
55 give competitors a business advantage by knowing the proposal's
56 financial strategy and innovative plans, thereby injuring the
57 entity that submitted the unsolicited proposal and placing the
58 entity at a competitive disadvantage in the marketplace. Without

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59 the exemption, entities might not submit unsolicited proposals
60 that could provide timely and cost-effective solutions for
61 qualifying projects that serve a public need. Therefore, the
62 Legislature finds that the harm that may result from the release
63 of such information outweighs any public benefit that may be
64 derived from disclosure of the information.

65 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic Public Records Bill Number SB 1318

Name Richard Watson Amendment Barcode _____ (if applicable)

Job Title Legislative Counsel (if applicable)

Address P.O. Box 10038 Phone 850 222 0000

Street

Tallahassee FL 32302

City

State

Zip

E-mail Mike.Watson@associatedbuilders.com

Speaking: For Against Information

Representing Associated Builders & Contractors of FL

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)

3/19/2014

Meeting Date

Topic Public Records/Public-private Partnerships Bill Number 1318
(if applicable)

Name Leticia M Adams Amendment Barcode _____
(if applicable)

Job Title Senior Policy Director

Address 136 South Bronough Street Phone 850-544-6866
Street

Tallahassee Fl 32301
City State Zip

E-mail ladams@flchamber.com

Speaking: For Against Information

Representing Florida Chamber of Commerce

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG EVERS

2nd District

March 4, 2014

Honorable Senator Simpson
Senate Community Affairs Committee
322 SB
404 S. Monroe St.
Tallahassee, FL 32399

RE: SB 1318

Dear Chairman Simpson:

Please allow this letter to serve as my respectful request to include SB 1318 regarding Public Records on the agenda for your next Community Affairs Committee meeting.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers
State Senator, District 2

REPLY TO:

- 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
- 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 582

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Clemens

SUBJECT: Substance Abuse Services

DATE: March 16, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 provides a legislative intent, requires annual registration with the Department of Children & Families (department) by sober house transitional living homes (sober homes or sober houses) to operate in the state and provides a criminal penalty for operating without a valid certificate of registration. It provides definitions of “recovery residences,” “registrable components” and “residential dwelling units.” The registration fee is capped at \$200. The proposed legislation authorizes the department to conduct inspections, issue, deny, suspend or revoke a certificate of registration for a sober house. Certain personnel of the sober house transition home will be required to comply with level 2 background screening as provided in s. 435.04, F.S. Requirements for advertising a sober house transitional living home are provided in the proposed legislation.

The fiscal impact of this bill is unknown.

II. Present Situation:

Sober Houses

The maintenance of “sober houses” is motivated by the theory that housing addicts in a low-crime, drug-free community fosters rehabilitation and is essential to the success of any

addict's treatment.¹ Proponents of sober houses believe that "such environments foster sobriety and encourage trust and camaraderie between home residents."² Living in a sober house affords a recovering addict the opportunity to develop practical life skills and build self-confidence.³ "Sober homes" and "sober housing" are new terms for facilities formerly known as "halfway houses." Halfway houses were used by those leaving a residential center with limited residential options. Sober homes offer the same vital services to those in the early stages of recovery.⁴

The facilities, operators and organizational design of sober houses vary greatly. Some sober home advocates argue that the location of the home is critical to promoting recovery. They argue that placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.⁵ 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.⁶

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)⁷ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those 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 one's self, learning, speaking or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for the illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.⁸

The Florida Fair Housing Act provides in s. 760.23(7)(b), F.S., 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. The statute defines "discrimination" to include a refusal to make reasonable accommodations in rules, policies, practices or services when such

¹ 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).

² *Id.*

³ 12 Step Treatment Centers, *Sober Living Home Transitional Housing*, available at http://www.12stepcenters.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited March 13, 2014).

⁴ *Id.*

⁵ M.M. Gorman *et al.*, *supra* note 2.

⁶ *Id.*

⁷ 42 U.S.C. 3601 *et seq.*

⁸ See U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited March 13, 2014).

accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Americans with Disabilities Act

In July 1999, the United States Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).⁹ 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, requiring 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.¹⁰ 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 FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹¹

III. Effect of Proposed Changes:

Section 1 provides legislative findings, intent and purpose.

Section 2 amends s. 397.311, F.S., to add the following definitions:

- “Recovery residence” means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy the dwelling which has a single beginning date and a single termination date.
- “Registrable component” to mean a sober house transitional living home that is a residential dwelling unit that provides, offers, or advertises housing in an alcohol-free and drug-free living environment to persons needing room and board while receiving treatment services as provided in s. 397.311(18), F.S., at a licensed facility. The term includes the community housing component of a day or night treatment facility of a residential treatment facility that offers level 5 treatment programs, but the term does not include a recovery residence.
- “Residential dwelling unit” to mean a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- “Sober house operator” means a person who operates a sober house transitional living home.

Section 3 creates s. 397.487, F.S., which will require sober houses to comply with the department’s annual application process for a certificate of registration to operate. A sober house licensed by the department as a residential treatment facility that offers level 5 treatment programs (this level program provides only housing and meals to clients who are mandated to

⁹ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹⁰ 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 March 13, 2014).

¹¹ *United States of America vs. City of Boca Raton*, 1008 WL 686689 (S.D. Fla. 2008).

receive services at alternate locations in facilities owned and operated by the same provider) or serves as a community housing component of a day or night treatment facility is not required to obtain additional licensure or registration for the housing component of the license.

The application process will require the sober house to provide:

- Name and physical address of the sober house transitional living home;
- Name of the sober house operator;
- Number of individuals served at the sober house;
- Proof of screening and background checks as required under ch. 435, F.S.;
- Written eviction procedures;
- Proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances; and
- A registration fee, not to exceed \$200.

Sober houses in existence on July 1, 2014, shall apply for a certificate of registration by September 1, 2014. Sober houses in existence on July 1, 2014, that have a license as the community housing component of a day or night treatment facility or are licensed as a residential treatment facility offering level 5 treatment programs do not have to apply for additional licensure or certification by September 1, 2014. Operating a sober house without a valid certificate of registration is a first degree misdemeanor. The department is authorized to adopt rules pertaining to the application process for obtaining a certificate of registration.

This section also provides that the owner, director, manager, operator, and chief financial officer of a sober house are subject to level 2 background screening as provided in s. 435.04, F.S. The department may not grant a certificate of registration:

- If a sober house fails to provide proof that background screening information has been submitted in accordance with ch. 435, F.S.; or
- If one of the above named individuals has been arrested for and pled to an offense prohibited under the level 2 screening standards established in s. 435.04, F.S., unless an exemption from disqualification has been granted by the department pursuant to ch. 435, F.S.

If one of the above named individuals is arrested or pleads guilty to an offense prohibited under s. 435.04, F.S., while acting in his or her professional capacity, the department shall immediately suspend the certificate of registration of a sober home until the individual resigns or is removed and replaced by another qualified individual.

All advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement. Violation of this requirement is a first degree misdemeanor.

The bill provides authority to the department's authorized agent to enter and inspect a sober home with a certificate of registration at any time to determine if it is in compliance with certification requirements. Additionally, with the permission of the person in charge of the premises or pursuant to a warrant, the department's authorized agent may enter and inspect a residential dwelling unit that is reasonably suspected to be operating as a sober house in violation of the Florida Statutes. The department's designated and authorized agent may access the records

of the individuals served by a sober house solely for certification, monitoring and investigation. Prior to granting or denying a certificate of registration, the department's authorized agent may enter and inspect the premises of an applicant sober house at any time. The department shall maintain certificates of registration and inspection reports of sober houses as public records available to any person upon request and payment of a reasonable charge for copying as provided in s. 119.07, F.S.

If the department determines that an applicant or a sober house is not in compliance with statutory and regulatory requirements, the department may deny, suspend, revoke or impose reasonable restrictions or penalties on the certificate of registration or any portion of the certificate. The department may:

- Impose an administrative penalty of up to \$500 per day; or
- Suspend or revoke a sober house certificate of registration that, after notice, has failed to correct a substantial or chronic violation of a statutory or regulatory requirement that impacts the safety of the individuals served in the house.

If a sober house's certificate of registration is revoked, the house is barred for one year after the revocation from submitting an application for a certificate of registration. Proceedings for the denial, suspension or revocation of a sober house certificate of registration must be conducted pursuant to ch. 120, F.S. The department has the authority to maintain an action in court to enjoin the operation of an uncertified sober house.

To avoid increased homelessness and crime and to ensure the due process rights of sober house tenants are not violated, a sober house not subject to Florida's Landlord and Tenant Act, ch. 83, F.S., must provide 48 hours' advance, written notice of eviction to a tenant or immediate shelter to that tenant for at least 48 hours after eviction at an alternative temporary dwelling unit.

The department is provided authority to adopt rules to administer this section.

Section 4 amends s. 212.055(5)(e)2., F.S., to refer to s. 397.311, F.S., instead of 397.311(35), F.S., when incorporating the definition of "stabilization."

Section 5 amends s. 440.102(1)(d) and (g), F.S., to refer to s. 397.311, F.S., instead of 397.311(33), F.S., when incorporating the definitions of "drug rehabilitation program" and "employee assistance program."

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fair Housing Act (FHA) prohibits a large range of practices that are considered to discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. The term “disability” has been interpreted to include individuals recovering from drug or alcohol addiction.¹² Therefore, discriminatory practices against recovering addicts are prohibited. As such, restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home adversely affected by the bill may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes DCF to regulate sober houses pursuant to ch. 397, F.S. It also authorizes the department to assess fees.

B. Private Sector Impact:

The bill could limit the number of sober houses due to increased qualifications for those homes not currently subject to licensure by the department. The sober houses would be assessed a certificate of registration fee. The fiscal impact of such fees is unknown as the department would need to adopt the amount by rule.

C. Government Sector Impact:

The bill would have a significant fiscal impact on DCF. The number of sober houses statewide that would apply for certificates of registration and require initial and ongoing inspections and administrative oversight is unknown.

Similar to proposed legislation introduced in 2013 (SB 738), the department cannot determine the exact fiscal impact of this bill. The number of sober homes that would require inspection and the number of background screenings that would require review is unknown. Additionally, the department would need funding to modify its existing licensure database and pay for additional data storage capacity at the shared resource center. The department would need staff to perform inspections, process applications, review background screenings, provide legal representation in chapter 120 proceedings in the event of a denial, revocation or suspension of a registration and update its licensing and technology systems.

¹² M.M. Gorman *et al*, *supra* note 2.

In 2013, the department estimated it would need 65 new positions to perform all the identified tasks at a cost of \$6.8 million and \$200,000 to modify its licensing and technology systems for a total impact of \$7 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.305, 397.311, 212.055, and 440.102.

This bill creates section 397.487 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 Children, Families, and Elder Affairs on February 11, 2014:

- Provides legislative intent.
- Adds a definition of a “recovery residence.”
- Provides an exemption from certification for sober house transitional living homes licensed by the department as a residential treatment facility offering level 5 treatment program or one that serves and is licensed as a community housing component of a day or night treatment facility. These licensed facilities are also exempt from the September 1, 2014, application for certification deadline.

- B. **Amendments:**

None.

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

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1 A bill to be entitled
2 An act relating to substance abuse services; amending
3 s. 397.305, F.S.; providing legislative intent with
4 regard to sober house transitional living homes;
5 amending s. 397.311, F.S.; defining terms; creating s.
6 397.487, F.S.; prohibiting a sober house transitional
7 living home from operating in this state without a
8 valid certificate of registration from the Department
9 of Children and Families; providing an exception;
10 requiring a sober house operator to annually apply for
11 a certificate of registration with the department;
12 requiring certain sober house transitional living
13 homes to apply for a certificate of registration by a
14 specified date; providing for nonapplicability;
15 requiring the department to adopt rules pertaining to
16 the application process for obtaining a certificate of
17 registration; requiring background screening of
18 certain personnel; requiring the department to suspend
19 and reinstate a certificate of registration of a sober
20 house transitional living home under certain
21 circumstances; providing a criminal penalty for
22 operating a sober house transitional living home
23 without a valid certificate of registration; providing
24 certain requirements in advertising a sober house
25 transitional living home; providing a criminal
26 penalty; authorizing the department to conduct
27 inspections; authorizing the department to deny,
28 suspend, or revoke the certificate of registration of
29 a sober house transitional home; providing eviction

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30 procedures; requiring the department to adopt rules;
31 amending ss. 212.055 and 440.102, F.S.; conforming
32 cross-references; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Subsections (10) and (11) are added to section
37 397.305, Florida Statutes, to read:

38 397.305 Legislative findings, intent, and purpose.—

39 (10) It is recognized by the Legislature that a person
40 suffering from addiction has a higher success rate of achieving
41 long-lasting sobriety when given the opportunity to build a
42 stronger foundation by living in a supportive, sober environment
43 after completing treatment.

44 (11) It is the intent of the Legislature to protect persons
45 who live in a sober house transitional living home while they
46 undergo treatment as provided in s. 397.311(18) at a licensed
47 facility. These persons represent a vulnerable consumer
48 population in need of adequate housing, whom this state and its
49 subdivisions have a legitimate state interest in protecting.

50 Section 2. Subsections (30) through (39) of section
51 397.311, Florida Statutes, are amended to read:

52 397.311 Definitions.—As used in this chapter, except part
53 VIII, the term:

54 (30) "Recovery residence" means a democratically run, peer-
55 managed, and peer-supported dwelling for a resident who is
56 established in his or her recovery and who is a party to a
57 single lease agreement to occupy the dwelling which has a single
58 beginning date and a single termination date.

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59 (31) "Registrable component" includes a sober house
60 transitional living home that is a residential dwelling unit
61 that provides, offers, or advertises housing in an alcohol-free
62 and drug-free living environment to persons who need room and
63 board while receiving treatment services as provided in s.
64 397.311(18) at a licensed facility. This term includes the
65 community housing component of a day or night treatment facility
66 or a residential treatment facility that offers level 5
67 treatment programs, but the term does not include a recovery
68 residence.

69 (32) "Residential dwelling unit" means a single unit used
70 primarily for living and sleeping which provides complete
71 independent living facilities for one or more persons, including
72 permanent provisions for living, sleeping, eating, cooking, and
73 sanitation.

74 (33)~~(30)~~ "Screening" means the gathering of initial
75 information to be used in determining a person's need for
76 assessment, services, or referral.

77 (34)~~(31)~~ "Secure facility," except where the context
78 indicates a correctional system facility, means a provider that
79 has the authority to deter the premature departure of
80 involuntary individuals whose leaving constitutes a violation of
81 a court order or community-based supervision as provided by law.
82 The term "secure facility" includes addictions receiving
83 facilities and facilities authorized by local ordinance for the
84 treatment of habitual abusers.

85 (35)~~(32)~~ "Service component" or "component" means a
86 discrete operational entity within a service provider which is
87 subject to licensing as defined by rule. Service components

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88 include prevention, intervention, and clinical treatment as
89 defined ~~described~~ in subsection (18).

90 (36) ~~(33)~~ "Service provider" or "provider" means a public
91 agency, a private for-profit or not-for-profit agency, a person
92 who is a private practitioner, or a hospital licensed under this
93 chapter or exempt from licensure under this chapter.

94 (37) ~~(34)~~ "Service provider personnel" or "personnel"
95 includes all owners, directors, chief financial officers, staff,
96 and volunteers, including foster parents, of a service provider.

97 (38) "Sober house operator" means a person who operates a
98 sober house transitional living home.

99 (39) ~~(35)~~ "Stabilization" connotes short-term emergency
100 treatment and means:

101 (a) Alleviation of a crisis condition; or

102 (b) Prevention of further deterioration,

103
104 ~~and connotes short-term emergency treatment.~~

105 (40) ~~(36)~~ "Substance abuse" means the misuse or abuse of, or
106 dependence on alcohol, illicit drugs, or prescription
107 medications. As an individual progresses along this continuum of
108 misuse, abuse, and dependence, there is an increased need for
109 substance abuse intervention and treatment to help abate the
110 problem.

111 (41) ~~(37)~~ "Substate entity" means a departmental office
112 designated to serve a geographical area specified by the
113 department.

114 (42) ~~(38)~~ "System of care" means a coordinated continuum of
115 community-based services and supports that are organized to meet
116 the challenges and needs of individuals who are at risk of

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117 developing substance abuse problems or individuals who have
118 substance abuse problems.

119 ~~(43)(39)~~ "Treatment plan" means an immediate and a long-
120 range plan based upon an individual's assessed needs and used to
121 address and monitor an individual's recovery from substance
122 abuse.

123 Section 3. Section 397.487, Florida Statutes, is created to
124 read:

125 397.487 Sober house transitional living homes.-

126 (1) APPLICATION.-

127 (a) A sober house transitional living home may not operate
128 in this state without a valid certificate of registration from
129 the department. However, a sober house transitional living home
130 that is licensed by the department as a residential treatment
131 facility that offers level 5 treatment programs or a sober house
132 transitional living home that is intended to serve as and has a
133 license for the community housing component of a day or night
134 treatment facility is not required to obtain additional
135 licensure or registration for the housing component of the
136 license.

137 (b) A sober house operator shall annually apply to the
138 department for a certificate of registration to operate a sober
139 house transitional living home by submitting the following:

140 1. The name and physical address of the sober house
141 transitional living home.

142 2. The name of the sober house operator.

143 3. The number of individuals served at the sober house
144 transitional living home.

145 4. Proof of screening and background checks as required

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146 under chapter 435.

147 5. Written eviction procedures in accordance with
148 subsection (7).

149 6. Proof of satisfactory fire, safety, and health
150 inspections and compliance with local zoning ordinances.

151 7. A registration fee, not to exceed \$200.

152 (c) A sober house transitional living home in existence on
153 July 1, 2014, shall apply for a certificate of registration by
154 September 1, 2014. This paragraph does not apply to a sober
155 house transitional living home in existence on July 1, 2014,
156 which has a license for the community housing component of a day
157 or night treatment facility or is licensed as a residential
158 treatment facility that offers level 5 treatment programs.

159 (d) The department shall adopt rules pertaining to the
160 application process for obtaining a certificate of registration.

161 (2) BACKGROUND SCREENING.—

162 (a) The owner, director, manager, operator, and chief
163 financial officer of a sober house transitional living home are
164 subject to level 2 background screening as provided in s.
165 435.04.

166 (b) The department may not grant a certificate of
167 registration to a sober house transitional living home that
168 fails to provide proof that background screening information has
169 been submitted in accordance with chapter 435.

170 (c) If a background screening reveals that an individual
171 specified in paragraph (a) has been arrested for and is awaiting
172 final disposition of; has been found guilty of, regardless of
173 adjudication, or has entered a plea of nolo contendere or guilty
174 to; or has been adjudicated delinquent and the record has not

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175 been sealed or expunged for, an offense prohibited under the
176 level 2 screening standards established in s. 435.04, the
177 department may not grant a certificate of registration to the
178 applicant's sober house transitional living home unless an
179 exemption from disqualification has been granted by the
180 department pursuant to chapter 435.

181 (d) The department shall immediately suspend the
182 certificate of registration of a sober house transitional living
183 home if an individual specified in paragraph (a), while acting
184 in his or her professional capacity, is arrested for and is
185 awaiting final disposition of; is found guilty of, regardless of
186 adjudication, or enters a plea of nolo contendere or guilty to;
187 or is adjudicated delinquent and the record has not been sealed
188 or expunged for, an offense prohibited under the level 2
189 screening standards established in s. 435.04. The department
190 shall reinstate the certificate of registration after such
191 individual resigns or is removed from his or her position at the
192 sober house transitional living home and replaced by another
193 qualified individual who passes the level 2 background screening
194 as provided in s. 435.04.

195 (3) PENALTIES.—A person or agency that operates a
196 residential dwelling unit as a sober house transitional living
197 home without a valid certificate of registration in accordance
198 with this section commits a misdemeanor of the first degree,
199 punishable as provided in s. 775.082 or s. 775.083.

200 (4) ADVERTISING.—A person, as defined in s. 1.01, who owns
201 or operates a sober house transitional living home must include
202 the home's state registration number within an advertisement of
203 the sober house transitional living home. A person who violates

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204 this subsection commits a misdemeanor of the first degree,
205 punishable as provided in s. 775.082 or s. 775.083.

206 (5) INSPECTIONS.—

207 (a) An authorized agent of the department may enter and
208 inspect at any time a sober house transitional living home that
209 has a certificate of registration from the department to
210 determine whether it is in compliance with s. 397.411 and rules
211 65D-30.004 and 65D-30.0081, Florida Administrative Code.

212 (b) An authorized agent of the department may, with the
213 permission of the person in charge of the premises or pursuant
214 to a warrant, enter and inspect a residential dwelling unit that
215 the agent reasonably suspects to be operating as a sober house
216 transitional living home in violation of this section.

217 (c) Notwithstanding the confidentiality provisions of this
218 chapter, a designated and authorized agent of the department may
219 access the records of the individuals served by a sober house
220 transitional living home solely for purposes of certification,
221 monitoring, and investigation. The department may interview
222 these individuals as specified by rule.

223 (d) Before the department grants or denies a certificate of
224 registration, an authorized agent of the department may enter
225 and inspect at any time the premises of an applicant sober house
226 transitional living home.

227 (e) The department shall maintain certificates of
228 registration and reports of inspections of sober house
229 transitional living homes as public records that are available
230 to any person upon request and upon payment of a reasonable
231 charge for copying as provided in s. 119.07.

232 (6) DENIAL; SUSPENSION; AND REVOCATION.—

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233 (a) If the department determines that an applicant or a
234 sober house transitional living home is not in compliance with
235 statutory and regulatory requirements, the department may deny,
236 suspend, revoke, or impose reasonable restrictions or penalties
237 on the certificate of registration or any portion of the
238 certificate. In such case, the department may:

239 1. Impose an administrative penalty of up to \$500 per day
240 against a sober house transitional living home that operates in
241 violation of statutory or regulatory requirements.

242 2. Suspend or revoke a sober house transitional living
243 home's certificate of registration if, after notice, the
244 department determines that the home has failed to correct a
245 substantial or chronic violation of a statutory or regulatory
246 requirement which impacts the safety of the individuals served
247 at the home.

248 (b) If a sober house transitional living home's certificate
249 of registration is revoked, the home is barred from submitting
250 an application for a certificate of registration to the
251 department for a period of 1 year after the revocation.

252 (c) Proceedings for the denial, suspension, or revocation
253 of a sober house transitional living home's certificate of
254 registration must be conducted in accordance with chapter 120.

255 (d) The department may maintain an action in court to
256 enjoin the operation of an uncertified sober house transitional
257 living home that violates this section.

258 (7) EVICTIONS.—In order to avoid increased homelessness and
259 crime and to ensure that the due process rights of a tenant are
260 not violated, a sober house transitional living home that is not
261 subject to chapter 83 must provide 48 hours' advance, written

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262 notice of eviction to a tenant or immediate shelter to that
263 tenant for at least 48 hours after eviction at an alternative
264 temporary dwelling unit. As used in this subsection, the term
265 "tenant" means an individual entitled to occupy or reside at a
266 sober house transitional living home in accordance with a
267 written agreement.

268 (8) The department shall adopt rules to administer this
269 section.

270 Section 4. Paragraph (e) of subsection (5) of section
271 212.055, Florida Statutes, is amended to read:

272 212.055 Discretionary sales surtaxes; legislative intent;
273 authorization and use of proceeds.—It is the legislative intent
274 that any authorization for imposition of a discretionary sales
275 surtax shall be published in the Florida Statutes as a
276 subsection of this section, irrespective of the duration of the
277 levy. Each enactment shall specify the types of counties
278 authorized to levy; the rate or rates which may be imposed; the
279 maximum length of time the surtax may be imposed, if any; the
280 procedure which must be followed to secure voter approval, if
281 required; the purpose for which the proceeds may be expended;
282 and such other requirements as the Legislature may provide.
283 Taxable transactions and administrative procedures shall be as
284 provided in s. 212.054.

285 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
286 s. 125.011(1) may levy the surtax authorized in this subsection
287 pursuant to an ordinance either approved by extraordinary vote
288 of the county commission or conditioned to take effect only upon
289 approval by a majority vote of the electors of the county voting
290 in a referendum. In a county as defined in s. 125.011(1), for

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291 the purposes of this subsection, "county public general
292 hospital" means a general hospital as defined in s. 395.002
293 which is owned, operated, maintained, or governed by the county
294 or its agency, authority, or public health trust.

295 (e) A governing board, agency, or authority shall be
296 chartered by the county commission upon this act becoming law.
297 The governing board, agency, or authority shall adopt and
298 implement a health care plan for indigent health care services.
299 The governing board, agency, or authority shall consist of no
300 more than seven and no fewer than five members appointed by the
301 county commission. The members of the governing board, agency,
302 or authority shall be at least 18 years of age and residents of
303 the county. No member may be employed by or affiliated with a
304 health care provider or the public health trust, agency, or
305 authority responsible for the county public general hospital.
306 The following community organizations shall each appoint a
307 representative to a nominating committee: the South Florida
308 Hospital and Healthcare Association, the Miami-Dade County
309 Public Health Trust, the Dade County Medical Association, the
310 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
311 County. This committee shall nominate between 10 and 14 county
312 citizens for the governing board, agency, or authority. The
313 slate shall be presented to the county commission and the county
314 commission shall confirm the top five to seven nominees,
315 depending on the size of the governing board. Until such time as
316 the governing board, agency, or authority is created, the funds
317 provided for in subparagraph (d)2. shall be placed in a
318 restricted account set aside from other county funds and not
319 disbursed by the county for any other purpose.

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

326 2. The plan and subsequent amendments to it shall fund a
327 defined range of health care services for both indigent persons
328 and the medically poor, including primary care, preventive care,
329 hospital emergency room care, and hospital care necessary to
330 stabilize the patient. For the purposes of this section,
331 "stabilization" means stabilization as defined in s. 397.311 ~~s.~~
332 ~~397.311(35)~~. Where consistent with these objectives, the plan
333 may include services rendered by physicians, clinics, community
334 hospitals, and alternative delivery sites, as well as at least
335 one regional referral hospital per service area. The plan shall
336 provide that agreements negotiated between the governing board,
337 agency, or authority and providers shall recognize hospitals
338 that render a disproportionate share of indigent care, provide
339 other incentives to promote the delivery of charity care to draw
340 down federal funds where appropriate, and require cost
341 containment, including, but not limited to, case management.
342 From the funds specified in subparagraphs (d)1. and 2. for
343 indigent health care services, service providers shall receive
344 reimbursement at a Medicaid rate to be determined by the
345 governing board, agency, or authority created pursuant to this
346 paragraph for the initial emergency room visit, and a per-member
347 per-month fee or capitation for those members enrolled in their
348 service area, as compensation for the services rendered

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349 following the initial emergency visit. Except for provisions of
350 emergency services, upon determination of eligibility,
351 enrollment shall be deemed to have occurred at the time services
352 were rendered. The provisions for specific reimbursement of
353 emergency services shall be repealed on July 1, 2001, unless
354 otherwise reenacted by the Legislature. The capitation amount or
355 rate shall be determined prior to program implementation by an
356 independent actuarial consultant. In no event shall such
357 reimbursement rates exceed the Medicaid rate. The plan must also
358 provide that any hospitals owned and operated by government
359 entities on or after the effective date of this act must, as a
360 condition of receiving funds under this subsection, afford
361 public access equal to that provided under s. 286.011 as to any
362 meeting of the governing board, agency, or authority the subject
363 of which is budgeting resources for the retention of charity
364 care, as that term is defined in the rules of the Agency for
365 Health Care Administration. The plan shall also include
366 innovative health care programs that provide cost-effective
367 alternatives to traditional methods of service and delivery
368 funding.

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

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

377 5. At the end of each fiscal year, the governing board,

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378 agency, or authority shall prepare an audit that reviews the
379 budget of the plan, delivery of services, and quality of
380 services, and makes recommendations to increase the plan's
381 efficiency. The audit shall take into account participant
382 hospital satisfaction with the plan and assess the amount of
383 poststabilization patient transfers requested, and accepted or
384 denied, by the county public general hospital.

385 Section 5. Paragraphs (d) and (g) of subsection (1) of
386 section 440.102, Florida Statutes, are amended to read:

387 440.102 Drug-free workplace program requirements.—The
388 following provisions apply to a drug-free workplace program
389 implemented pursuant to law or to rules adopted by the Agency
390 for Health Care Administration:

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

393 (d) "Drug rehabilitation program" means a service provider,
394 as defined in s. 397.311, which established pursuant to s.
395 397.311(33), that provides confidential, timely, and expert
396 identification, assessment, and resolution of employee drug
397 abuse.

398 (g) "Employee assistance program" means an established
399 program capable of providing expert assessment of employee
400 personal concerns; confidential and timely identification
401 services with regard to employee drug abuse; referrals of
402 employees for appropriate diagnosis, treatment, and assistance;
403 and followup services for employees who participate in the
404 program or require monitoring after returning to work. If, in
405 addition to the above activities, an employee assistance program
406 provides diagnostic and treatment services, these services shall

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407 in all cases be provided by service providers as defined in s.
408 397.311 ~~pursuant to s. 397.311(33).~~

409 Section 6. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Sober Homes

Bill Number 582
(if applicable)

Name Marty Cassini

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

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Speaking: For Against Information

Representing Broward County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14
Meeting Date

Topic Sober Homes

Bill Number S 582
(if applicable)

Name DAVID SIGERSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2410 VAN BUREN ST

Phone 954 336 3544

Street

Hollywood
City

FL 33020
State Zip

E-mail dksigerson2@aol.com

Speaking: For Against Information

Representing City of Margate

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

03-19-14
Meeting Date

Topic Substance Abuse Services

Bill Number 582
(if applicable)

Name Lauren Jackson

Amendment Barcode _____
(if applicable)

Job Title Associate

Address 205 S. Adams St
Street

Phone 931-265-8999

Tallahassee FL 32301
City State Zip

E-mail lauren@ericksconsultants.com

Speaking: For Against Information

Representing BROWARD COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/19
Meeting Date

Topic SUBSTANCE ABUSE SERVICES

Bill Number 582
(if applicable)

Name TODD BOW LARSON

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE DIRECTOR

Address 301 N. OLIVE AVE
Street

Phone (561) 355-3451

WEST PALM BEACH FL 33401
City State Zip

E-mail tlarson@pbca.gov

Speaking: For Against Information

Representing PALM BEACH COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Sober Homes Bill Number _____
(if applicable)

Name Mark Fantamé Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 28168 Mahan Drive Phone 878-2196
Street

TALUHASSEE FL E-mail _____
City State Zip

Speaking: For Against Information

Representing FLORIDA Alcohol + Drug Abuse Assoc.

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

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

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3/19/14

Meeting Date

Topic Sober Homes

Bill Number S82
(if applicable)

Name Lamar Fisher

Amendment Barcode _____
(if applicable)

Job Title Mayer City of Pompano Bch

Address 100 W. Atlantic Blvd
Street

Phone 954-786-4601

Pompano Bch FL 33060
City State Zip

E-mail lamar.fisher@copfl.com

Speaking: For Against Information

Representing City of Pompano Bch

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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3/19/14

Meeting Date

Topic Substance abuse services

Bill Number 582
(if applicable)

Name Susan Harbin

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address 100 S. Monroe

Phone (770) 546-8845

Street
Tallahassee FL 32301
City *State* *Zip*

E-mail sharbin@fl-counties.com

Speaking: For Against Information

Representing Florida Association of Counties

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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THE FLORIDA SENATE
APPEARANCE RECORD

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3-19-14

Meeting Date

Topic Substance Abuse Services

Bill Number SB 582
(if applicable)

Name Richard Genfuy

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2305 BRAEBURN CIR
Street
THH FL 32309
City State Zip

Phone 251-1837

E-mail _____

Speaking: For Against Information

Representing ECONOMIC Council of Palm Beh.

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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THE FLORIDA SENATE
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3/19/14

Meeting Date

Topic Sober Homes

Bill Number 582
(if applicable)

Name Casey Cook

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address Po Box 1757

Phone 850 701 3701

Street

Tallahassee FL 32302

City

State

Zip

E-mail ccook@flcities.com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

19 Mch 14

Meeting Date

Topic Sober Homes

Bill Number CS/SB 582
(if applicable)

Name Barney Bishop III

Amendment Barcode _____
(if applicable)

Job Title President & CEO

Address 204 So. Monroe St., Ste. 201

Phone 850/907-3436

Street

Tall

City

FL

State

32301

Zip

E-mail barney@barneybishop.com

Speaking: For Against Information

Representing Fla. Smart Justice Alliance & Lifescape Solutions

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Substance Abuse Services

Bill Number 582
(if applicable)

Name Jordan Connors

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2145 Sw Cape Cod Dr

Phone 772 418 6068

Street

Port St Lucie FL 34953

E-mail _____

City

State

Zip

Speaking: For Against Information

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.

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S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

February 11, 2014

Senator Wilton Simpson, Chair
Committee on Community Affairs
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simpson:

I respectfully request that CS/SB 582 – Substance Abuse Services be added to the agenda for the next Committee on Community Affairs meeting.

SB 582 will allow the state to track sober house transitional living homes by providing rules for the registration and operation of these type of substance abuse service facilities. Currently, sober homes can be established anywhere by anyone and, while claiming to provide assistance for recovering addicts, oftentimes do not offer treatment programs or services. The proposed legislation will outline where and how sober homes can be operated and address public safety issues that result from poorly run facilities.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

cc: Tom Yeatman, Staff Director

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 340

INTRODUCER: Community Affairs Committee and Senator Flores and others

SUBJECT: Prepaid Dental Plans

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.	Stearns	Yeatman	CA	Fav/CS
3.			AHS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 340 creates a statewide Medicaid prepaid dental health program. The bill provides a statement of legislative findings and intent.

The bill directs the Agency for Health Care Administration (AHCA or agency) to contract with at least two prepaid dental health plans to provide dental services under the Medicaid program to children statewide. The bill directs the agency to seek and implement all necessary federal and state waivers and plan amendments. The bill requires the agency to issue a competitive procurement after the agency has received federal approval for the program. Enrollment in the program shall begin no later than September 1, 2015.

The bill contains provisions requiring gap coverage, notice requirements, submission of encounter data and minimum medical loss ratios. The agency is required to submit a report on the Medicaid prepaid dental health program to the Governor, President of the Senate, and Speaker of the House by January 15 of each year the program is in operation.

The bill amends s. 409.973(1)(3), F.S., to require Medicaid managed care plans to cover only adult dental services.

The bill has an estimated annualized fiscal impact of at least \$20 million in lost enhanced adult dental benefits and \$138,489 in administrative costs to the AHCA.

II. Present Situation:

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.3 million Floridians are currently enrolled in Medicaid and the program's estimated expenditures for fiscal year 2012-13 were approximately \$21 billion.¹ The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels required to receive federal matching funds. Benefit levels can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in statute under ss. 409.905 and 409.906, F.S., respectively. Comprehensive dental benefit coverage is a mandatory Medicaid service only for children in Florida.

Florida Medicaid recipients currently receive their benefits through a number of different delivery systems. Florida has at least 15 different managed care models,² including the model being used for the delivery of dental services, licensed, prepaid dental health plans (PDHP). The PDHPs are classified as prepaid ambulatory health plans by 42 CFR Part 438.³ The PDHPs are paid on a capitated basis for all covered dental services, meaning that the plans receive a single rate per individual member for all dental costs associated with that member. Currently two PDHPs serve more than 1.4 million pediatric Medicaid members.^{4, 5}

History of Prepaid Dental Plans

Proviso language in the 2001-2002 General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.⁶ The 2003 Legislature authorized the AHCA to contract on a prepaid or fixed sum basis for dental services for Medicaid-eligible recipients specifically using PDHPs.⁷ Through a competitive bid process, the AHCA executed its first PDHP contract in 2004 to serve children under age 21 in Miami-Dade County.⁸

The Legislature included a proviso in the 2010-11 GAA authorizing the AHCA to contract by competitive procurement with one or more prepaid dental plans on a regional or statewide basis

¹ Agency for Health Care Administration, *Florida Medicaid*, <http://ahca.myflorida.com/Medicaid/index.shtml> (last visited March 6, 2014).

² Comm. on Health Regulation, Fla. Senate, *Overview of Medicaid Managed Care Programs in Florida*, p.1, (Issue Brief 2011-221) (November 2010).

³ See Agency for Health Care Administration, *Model Statewide Prepaid Dental Health Plan (SPDHP) Contract, Attachment II-Core Contract Provisions*, p. 17, http://ahca.myflorida.com/medicaid/pdhp/docs/120120_Attachment_II_Core.pdf (last visited March 6, 2014).

⁴ See Agency for Health Care Administration, *Prepaid Dental Health Plans (PDHPs)*, <http://ahca.myflorida.com/medicaid/pdhp/index.shtml#Home> (last visited March 6, 2014).

⁵ See Agency for Health Care Administration, *Comprehensive Medicaid Managed Care Enrollment Reports, November 2013*, http://ahca.myflorida.com/mchq/Managed_Health_Care/MHMO/med_data.shtml (last visited March 6, 2014).

⁶ See Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).

⁷ Chapter 2003-405, L.O.F.

⁸ Agency for Health Care Administration, *2014 Agency Bill Analysis - HB 27*, p. 2, (Nov. 11, 2013) (on file with the Senate Health Policy Committee).

for a period not to exceed 2 years, in all counties except those participating in Miami-Dade County and Medicaid Reform, under a fee-for-service or managed care delivery system.⁹

In the following year, the Legislature included a proviso in the 2012-13 GAA requiring that, for all counties other than Miami-Dade, the AHCA could not limit Medicaid dental services to prepaid plans and must allow qualified dental providers to provide services on a fee-for-service basis.¹⁰ Similar language was also passed in the 2012-13 appropriations implementing bill, which included additional directives to AHCA to terminate existing contracts, as needed. The 2012-13 implementing bill provisions became obsolete on July 1, 2013.

According to the AHCA website, two vendors were selected for the statewide program and it has been implemented statewide since December 1, 2012.¹¹ Under the current statewide program, Medicaid recipients may select one of the two PDHPs in their county for dental services. The existing dental plan contracts cover only Medicaid recipients under age 21. Dental care through Medicaid fee-for-service providers ended July 1, 2013.

The current PDHP contracts were procured through a competitive process beginning in 2011, and contracts under that procurement were most recently renewed through September 30, 2014.¹² The Invitation to Negotiate (ITN) for that procurement limited renewal to no more than a three-year period.¹³

Statewide Medicaid Managed Care

In 2011, the Legislature passed HB 7107¹⁴ creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The SMMC program requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits for the delivery of primary and acute care, including dental services, under the Managed Medical Assistance component (MMA).¹⁵ Instead of being delivered as a separate benefit under a separate contract, dental services are to be incorporated by and be the responsibility of the managed care organization. Medicaid recipients who are enrolled in the MMA program will receive their dental services through fully integrated managed care plans as the program is implemented.¹⁶

The AHCA released an ITN to competitively procure managed care plans on a statewide basis in December 2012. Plans could supplement the minimum benefits in their bids and offer enhanced

⁹ See Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).

¹⁰ See Specific Proviso 186, General Appropriations Act 2012-2013 (Conference Report on HB 5001).

¹¹ Six counties were excluded from the statewide roll-out. Miami-Dade was excluded because of the prepaid dental program that has been in existence since 2004. Baker, Broward, Clay, Duval and Nassau counties were excluded because the Medicaid Reform Pilot Project has been implemented in those counties, which requires most Medicaid recipients to enroll in managed care plans that provide dental care as a covered service.

¹² Agency for Health Care Administration, *supra* note 8 at 5.

¹³ Agency for Health Care Administration, *supra* note 8 at 5.

¹⁴ See ch. 2011-134, L.O.F.

¹⁵ Health and Human Services Committee, Fla. House of Representatives, *PCS HHSC 11-01 Staff Analysis*, p.25, (Mar. 25, 2011).

¹⁶ Agency for Health Care Administration *supra* note 8, at 2.

options.¹⁷ Of the 14 general, non-specialty plans selected for contracts, all but one elected to include adult dental benefits as an enhanced benefit.¹⁸

The AHCA has released a draft MMA implementation schedule by region with the first roll-out scheduled for May 1, 2014, and the final group for August 1, 2014.¹⁹ The enabling legislation required the statewide roll-out to be completed by October 2014. Existing PDHP enrollees will be transitioned to dental coverage through their managed care plan as the enrollee's region is implemented under MMA.

Final approval by the federal government of the 1915(b) Medicaid waiver for the MMA component of the SMMC program was received on June 14, 2013.²⁰ The AHCA has recently begun the waiver renewal process for the period of July 1, 2014, through June 30, 2017.²¹

III. Effect of Proposed Changes:

Section 1 creates a statewide prepaid dental program for Medicaid recipients. The Legislature finds that the health of children is an overriding concern and the delivery of dental services is considerably different than the delivery of other health care services. The Legislature also finds that it is a paramount interest that continuous and high-quality dental care be provided to Medicaid recipients. Therefore, the bill states that the Legislature intends to establish a Medicaid prepaid dental program that is separate and apart from the Medicaid managed medical assistance program.

The bill directs the agency to implement a statewide prepaid dental program by contracting on a prepaid or fixed-sum basis with at least two appropriately licensed prepaid dental health plans to provide dental services to children statewide.

The bill directs the agency to apply for and implement state plan amendments and waivers of applicable federal laws and regulations necessary to implement the statewide prepaid dental program.

The bill directs the agency to issue a competitive procurement to implement the dental health program after the agency has received the necessary federal approval. All counties are to be included in the competitive procurement. All existing contracts entered into with prepaid dental health plans become null and void upon procurement of the new contracts.

¹⁷ See Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, *Special Terms and Conditions - Customized Benefit Packages*, p.17, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/FL_MMA_STCs_CMS_Approved_06-14-2013.pdf, (last visited March 13, 2014).

¹⁸ See Correspondence between Agency for Health Care Administration and Senator Anitere Flores, November 21, 2013 (on file with the Senate Health Policy Committee).

¹⁹ Agency for Health Care Administration, *Implementation Plan - Managed Medical Assistance Program*, p.5, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/FL_1115_MMA_IP_10-30-2013_Final.pdf (last visited March 13, 2014).

²⁰ See Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/06-14-2013_Approval_Letter.pdf (last visited March 13, 2014).

²¹ Agency for Health Care Administration, *Managed Medical Assistance - Federal Authorities*, http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#FCA (last visited March 13, 2014).

The bill states that enrollment in the statewide prepaid dental health programs shall not begin until the necessary federal waivers have been received and state plan amendments have been made. However, enrollment is to begin no later than September 1, 2015.

The bill provides that a child who is eligible to receive Medicaid benefits will receive dental care through the Medicaid managed care program until the statewide prepaid dental health program is available.

The bill requires the agency to provide any necessary notice to recipients regarding the transition to the new program before enrollment begins. The agency is authorized to assess any costs related to providing notice to the plans participating in the statewide prepaid dental health programs.

The bill states that the prepaid dental plans will be required by contract to submit encounter data as described in s. 409.967(2)(d), F.S.

The bill directs the agency to require a medical loss ratio of 85 percent for prepaid dental plans participating in the prepaid dental program. Methodology for calculating the ratio is provided.

The agency is required to submit a report by January 15 regarding the statewide prepaid dental program to the Governor, President of the Senate, and Speaker of the House of Representatives.

Section 2 amends s. 409.973,(1)(e), F.S., to require managed care plans to cover only adult dental services as described in s. 409.906(1), F.S., as part of their minimum benefits.

Section 3 states that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Requiring the AHCA to contract with licensed prepaid dental health plans for Medicaid dental services after October 1, 2014, under this bill could result in a challenge to that law as an unconstitutional impairment of contracts.

Section 409.973, F.S., requires the managed care plans to cover all required benefits which includes dental services. The ITN released for this component of SMMC articulated that managed care plans would be responsible for the full list of minimum benefits, including dental services.²² The bill's provisions severs the children's dental services from the awarded contracts and directs the AHCA to continue the delivery of these services through separate prepaid dental plans.

The ITN has concluded and 14 standard MMA contracts have been awarded.²³ According to the AHCA, the anticipated contract execution deadline for managed care plans selected under the ITN is January 31, 2014.²⁴ For 13 of the 14 plans selected, those contracts will include the mandatory benefit of comprehensive dental benefits for children and an expanded dental benefit for adults, a benefit enhancement that was a negotiated item during the ITN.²⁵ Implementation activities have begun and an implementation plan has been filed for approval, as required, with the federal Centers for Medicare and Medicaid Services (CMS) that includes these provisions.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.²⁶ The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts. *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993). “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”²⁷

The estimated annualized value of the 14 MMA contracts at stake is approximately \$70 billion over five years. Extracting just the value of expanded adult dental benefit in those same contracts is estimated at \$100 million over the same five-year period.²⁸ The value of these MMA contracts may be deemed substantial if the AHCA must re-negotiate these contracts or re-procure due to severing pediatric dental benefits from the benefits to be provided.

If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.²⁹ The court will also consider three factors when balancing the impairment of contracts with the important public purpose:

- Whether the law was enacted to deal with a broad economic or social problem;

²² Agency for Health Care Administration, ITN 017-12/13, Attachment D, p.87, http://www.myflorida.com/apps/vbs/adoc/F25820_AttachmentD_Region1.pdf (last visited March 13, 2014).

²³ Agency for Health Care Administration, *Florida Medicaid - Managed Medical Assistance*, http://ahca.myflorida.com/Medicaid/statewide_mc/index.shtml#mmahome (last visited March 13, 2014).

²⁴ Telephone conversation with Ashley James, Agency for Health Care Administration, December 20, 2013.

²⁵ Agency for Health Care Administration, *supra* note 18.

²⁶ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

²⁷ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1980). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

²⁸ Agency for Health Care Administration, *supra* note 8 at 4.

²⁹ *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983).

- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and,
- Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.³⁰

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

Neither the continued availability nor the full value to taxpayers and enrollees of this expanded adult dental benefit is assured should the MMA contracts be re-negotiated. Adults in the Medicaid program could lose the currently bargained for, and now unavailable adult dental benefits, and the state would lose a valuable customized benefit worth over \$20 million annually.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For the majority of adult Medicaid enrollees, current dental benefits are extremely limited. Under MMA, the AHCA negotiated expanded dental benefits with the managed care organizations. The AHCA estimates the value of these additional benefits at \$100 million over five years, at no additional cost to taxpayers.³¹ However, if the pediatric enrollees are carved out of the MMA contracts, the AHCA believes that the managed care organizations will lose leverage with the dental providers and existing dental provider networks resulting in the loss of the expanded benefit for the adults.³² In all likelihood, adult Medicaid enrollees will lose access to expanded dental benefits, dental providers may lose the opportunity for increased patients and revenue, and taxpayers will not have the benefit of a no-cost \$100 million negotiated contract term.

The managed care organizations awarded contracts under MMA may incur business costs to re-negotiate rates with the AHCA and with provider networks that must be re-configured due to the loss of pediatric members. Some vendors may elect to discontinue expanded dental benefits if it is no longer cost effective to do so with reduced enrollment.

Because re-procurement is necessary in order to implement the provisions of this bill, the private sector managed care plans will incur the business costs related to participation in re-procurement in addition to the costs of an implementation delay. Private sector managed care plans may also incur business costs for any re-negotiation of rates with their network providers based on delayed implementation.

³⁰ *Pomponio v. Cladrige of Pompanio Condo., Inc.*, 378 So. 2d 774 (Fla. 1980).

³¹ Agency for Health Care Administration, *supra* note 8 at 4.

³² Agency for Health Care Administration, *supra* note 8 at 4.

C. Government Sector Impact:

The AHCA has indicated that it is a “logistical impossibility” to implement the bill’s provisions prior to MMA implementation, regardless of resources.³³ The impossibility relates to a number of issues, including timing of current SMMC implementation activities, the deadline for requests of federal authority for such actions, the legality of the change in terms, and the programming needed to effectuate the proposed changes.

Secondly, since pediatric dental coverage was a required benefit, all of the contracts include this benefit; therefore, a re-negotiation with all managed care plans will be required to carve this benefit and the associated premium out of their contracts. The CMS will not permit the state to pay twice for the same benefit.

In addition, the AHCA will need to renegotiate rates with those managed care plans that incorporated the expanded adult dental benefit in their rate calculations. It may also become necessary to re-procure statewide without dental benefits. There would be a cost to the AHCA to conduct both of these contract negotiations or a second procurement. While the AHCA has not specifically identified a fiscal impact for an implementation delay, the agency has indicated that a delay results in lost savings to taxpayers for each month that MMA is not implemented.³⁴

System change costs to implement the carve-out would also be incurred by the AHCA. The AHCA also requests two additional staff and associated costs for contract monitoring to oversee the PDHP contracts for SFY 2014-15.

Agency for Health Care Administration:

Total Costs for 2 FTEs:	\$131,489
General Revenue	\$65,744.50
Medical Care TF	\$65,744.50
Travel Costs for 2 FTEs:	\$7,000
General Revenue	\$3,500
Medical Care TF	\$3,500
Total - Agency for Health Care Admin.:	\$138,489
General Revenue	\$69,245
Medical Care TF	\$69,245

In addition, as noted above in the Private Sector Impact, the AHCA estimates the value of these additional benefits at \$100 million over five years, at no additional cost to taxpayers.³⁵ However, if the pediatric enrollees are carved out of the current MMA contracts, the AHCA believes that the managed care organizations will lose leverage with

³³ Agency for Health Care Administration, *supra* note 8 at 4.

³⁴ See Correspondence between Agency for Health Care Administration and Senator Anitere Flores, November 21, 2013 (on file with the Senate Health Policy Committee).

³⁵ Agency for Health Care Administration, *supra* note 8 at 4.

the dental providers and existing dental provider networks resulting in the complete loss of the expanded dental benefit for adults.³⁶

The AHCA also loses the anticipated savings from the MMA contracts if implementation is delayed. Based on the projected 5 percent aggregate savings per year contemplated in s. 409.966(3)(d), F.S., and the estimated contract value of \$70 billion over five years, the minimum impact for a one year delay is \$736 million in lost savings.

An alternative valuation of this benefit by an actuary retained by the Florida Association of Health Plans has estimated the value of the expanded adult dental benefit at full program implementation at \$5,765,125 per month or an annualized value of over \$69 million.³⁷ The valuation was based on responses by five of the 13 plans currently participating in Medicaid and awarded contracts under the MMA program component. These plans represent over 58 percent of the November 2013 managed care enrollment.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA's analysis of the companion House legislation identifies several areas of concern for the implementation of the proposed bill. Carving out the children's dental services component from the MMA program could result in the loss of the expanded dental benefit for adults valued at over \$100 million over the life of the five-year contract.³⁹ Without the inclusion of the pediatric dental benefit, the agency opines that the adult dental network may no longer be cost effective for the managed care plans jeopardizing the benefit for adult enrollees and undermining the overall dental networks.⁴⁰ Adult dental benefits that are not currently covered were negotiated and incorporated as an expanded benefit in the majority of the managed care contracts as part of the recently concluded ITN.⁴¹ A separate analysis of the adult dental benefit by the Florida Association of Health Plans placed the value at over \$69 million annually, assuming full implementation.⁴²

Carving out the pediatric dental benefit will impact the negotiated rates under MMA because the capitated rate covers all services, including the dental. The CMS will not allow double payment for dental services. With the possibility of invalid rates, the AHCA raises the question of whether or not the agency could engage in rate re-negotiation with the existing winning managed care organizations or if a complete re-procurement must be conducted.⁴³

³⁶ Agency for Health Care Administration, *supra* note 8 at 4.

³⁷ Wakely Consulting Group, *Valuation of Medicaid Managed Medical Assistance Expanded Adult Dental Benefit*, p. 1, December 10, 2013 (on file with the Senate Health Policy Committee).

³⁸ Wakely Consulting Group, *supra* note 36 at 1.

³⁹ Agency for Health Care Administration, *supra* note 8 at 4.

⁴⁰ Agency for Health Care Administration, *supra* note 8 at 4.

⁴¹ Agency for Health Care Administration, *supra* note 8 at 3.

⁴² Wakely Consulting Group, *supra* note 36 at 1.

⁴³ Agency for Health Care Administration, *supra* note 8 at 4.

The AHCA's preliminary legal analysis pertaining to re-negotiated rates or re-procurement concern scoring during the bid process since consideration was given for the inclusion of the mandatory pediatric dental benefit as well as the expanded adult benefit. Non-winning vendors who had not included comparable dental benefits might challenge the change in terms and argue a different approach would have been taken if they had known that dental would be carved out later.⁴⁴ Similarly, some vendors that chose not to compete due to an inadequate dental network might challenge a re-negotiation. A total re-procurement for the MMA component, seen by the AHCA as the cleanest route, could delay the implementation by more than a year.⁴⁵

The agency states that it cannot logistically carve dental services out prior to implementation.⁴⁶ The agency cites the proposed, staggered roll-out schedule for SMMC, the statutory implementation completion date of October 1, 2014, the timeline for choice counseling by mid-February for the first region, and the time needed to re-program enrollment and data systems.⁴⁷ Implementation of the carve-out is identified to be a "logistical impossibility" prior to roll-out, regardless of the amount of additional resources.⁴⁸

Carving out this benefit from the MMA program could also set a precedent for other services that have been integrated in the managed medical assistance contracts with the managed care organizations, such as behavioral health care, transportation and pharmacy. If one service is successful in achieving a carve-out, this action could be seen as a slippery slope for other benefits seeking the same consideration.

The AHCA also indicates that federal approval would be required before implementation of the dental carve-out.⁴⁹ The current waiver that includes prepaid dental plans expires January 31, 2014, and the existing 1915(b) waiver incorporates dental services into the managed care contracts.⁵⁰ There are deadlines for seeking waivers and the deadline for seeking renewal of this particular waiver has passed as the AHCA anticipated the inclusion of these benefits under the managed care contracts.⁵¹ The agency would need to seek a new 1915(b) waiver, or request an amendment to the 1115 waiver that carves dental services out.⁵² Under either scenario, the AHCA indicates that there would not be sufficient time to receive approval prior to the rollout of the SMMC.⁵³

The bill contains a potential conflict between the conditions precedent to the beginning of enrollment in the program and a deadline beyond which enrollment must begin. In s. 409.91205(2)(c), F.S., (created by the bill), the Legislature declares that enrollment shall not begin before the necessary state plan amendments or waivers of applicable federal laws and regulations are obtained and implemented. The bill then states that enrollment in the program shall begin no later than September 1, 2015. It is unclear how enrollment into the program will

⁴⁴ Agency for Health Care Administration, *supra* note 8 at 3-4.

⁴⁵ Agency for Health Care Administration, *supra* note 8 at 4.

⁴⁶ Agency for Health Care Administration, *supra* note 8 at 4.

⁴⁷ Agency for Health Care Administration, *supra* note 8 at 4.

⁴⁸ Agency for Health Care Administration, *supra* note 8, at 4.

⁴⁹ Agency for Health Care Administration, *supra* note 8 at 4.

⁵⁰ Agency for Health Care Administration, *supra* note 8 at 4.

⁵¹ Agency for Health Care Administration, *supra* note 8 at 4.

⁵² Agency for Health Care Administration, *supra* note 8 at 4.

⁵³ Agency for Health Care Administration, *supra* note 8 at 4.

begin if the necessary federal waivers are not obtained or state plan amendments are not completed by September 1, 2015.

VIII. Statutes Affected:

This bill creates section 409.91205 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 Community Affairs on March 19, 2014:

- Directs the agency to implement a statewide prepaid dental program by contracting on a prepaid or fixed-sum basis with at least two appropriately licensed prepaid dental health plans to provide dental services to children statewide.
- Directs the agency to apply for and implement state plan amendments and waivers of applicable federal laws and regulations necessary to implement the statewide prepaid dental program.
- Directs the agency to issue a competitive procurement to implement the dental health program after the agency has received the necessary federal approval. All counties are to be included in the competitive procurement. All existing contracts entered into with prepaid dental health plans become null and void upon procurement of the new contracts.
- States that enrollment in the statewide prepaid dental health programs shall not begin until necessary federal waivers have been received and state plan amendments have been made. However, enrollment is to begin no later than September 1, 2015.
- Provides that a child who is eligible to receive Medicaid benefits will receive dental care through the Medicaid managed care program until the statewide prepaid dental health program is available.
- Requires the agency to provide any necessary notice to recipients regarding the transition to the new program before enrollment begins. Authorizes the agency to assess any costs related to providing notice to the plans participating in the statewide prepaid dental health programs.
- States that the prepaid dental plans will be required by contract to submit encounter data as described in s. 409.967(2)(d), F.S.
- Directs the agency to require a medical loss ratio of 85 percent for prepaid dental plans participating in the prepaid dental program. Provides methodology for calculating the ratio.
- Requires the agency to submit a report by January 15 regarding the statewide prepaid dental program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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 Flores

37-00179-14

2014340__

1 A bill to be entitled
2 An act relating to prepaid dental plans; amending s.
3 409.912, F.S.; postponing the scheduled repeal of a
4 provision requiring the Agency for Health Care
5 Administration to contract with dental plans for
6 dental services on a prepaid or fixed-sum basis;
7 authorizing the agency to provide a prepaid dental
8 health program in Miami-Dade County on a permanent
9 basis; requiring an annual report to the Governor and
10 Legislature; authorizing the agency to seek any
11 necessary revisions to the state plan or federal
12 waivers; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (41) of section 409.912, Florida
17 Statutes, is amended to read:

18 409.912 Cost-effective purchasing of health care.—The
19 agency shall purchase goods and services for Medicaid recipients
20 in the most cost-effective manner consistent with the delivery
21 of quality medical care. To ensure that medical services are
22 effectively utilized, the agency may, in any case, require a
23 confirmation or second physician's opinion of the correct
24 diagnosis for purposes of authorizing future services under the
25 Medicaid program. This section does not restrict access to
26 emergency services or poststabilization care services as defined
27 in 42 C.F.R. part 438.114. Such confirmation or second opinion
28 shall be rendered in a manner approved by the agency. The agency
29 shall maximize the use of prepaid per capita and prepaid

37-00179-14

2014340__

30 aggregate fixed-sum basis services when appropriate and other
31 alternative service delivery and reimbursement methodologies,
32 including competitive bidding pursuant to s. 287.057, designed
33 to facilitate the cost-effective purchase of a case-managed
34 continuum of care. The agency shall also require providers to
35 minimize the exposure of recipients to the need for acute
36 inpatient, custodial, and other institutional care and the
37 inappropriate or unnecessary use of high-cost services. The
38 agency shall contract with a vendor to monitor and evaluate the
39 clinical practice patterns of providers in order to identify
40 trends that are outside the normal practice patterns of a
41 provider's professional peers or the national guidelines of a
42 provider's professional association. The vendor must be able to
43 provide information and counseling to a provider whose practice
44 patterns are outside the norms, in consultation with the agency,
45 to improve patient care and reduce inappropriate utilization.
46 The agency may mandate prior authorization, drug therapy
47 management, or disease management participation for certain
48 populations of Medicaid beneficiaries, certain drug classes, or
49 particular drugs to prevent fraud, abuse, overuse, and possible
50 dangerous drug interactions. The Pharmaceutical and Therapeutics
51 Committee shall make recommendations to the agency on drugs for
52 which prior authorization is required. The agency shall inform
53 the Pharmaceutical and Therapeutics Committee of its decisions
54 regarding drugs subject to prior authorization. The agency is
55 authorized to limit the entities it contracts with or enrolls as
56 Medicaid providers by developing a provider network through
57 provider credentialing. The agency may competitively bid single-
58 source-provider contracts if procurement of goods or services

37-00179-14

2014340__

59 results in demonstrated cost savings to the state without
60 limiting access to care. The agency may limit its network based
61 on the assessment of beneficiary access to care, provider
62 availability, provider quality standards, time and distance
63 standards for access to care, the cultural competence of the
64 provider network, demographic characteristics of Medicaid
65 beneficiaries, practice and provider-to-beneficiary standards,
66 appointment wait times, beneficiary use of services, provider
67 turnover, provider profiling, provider licensure history,
68 previous program integrity investigations and findings, peer
69 review, provider Medicaid policy and billing compliance records,
70 clinical and medical record audits, and other factors. Providers
71 are not entitled to enrollment in the Medicaid provider network.
72 The agency shall determine instances in which allowing Medicaid
73 beneficiaries to purchase durable medical equipment and other
74 goods is less expensive to the Medicaid program than long-term
75 rental of the equipment or goods. The agency may establish rules
76 to facilitate purchases in lieu of long-term rentals in order to
77 protect against fraud and abuse in the Medicaid program as
78 defined in s. 409.913. The agency may seek federal waivers
79 necessary to administer these policies.

80 (41) (a) Notwithstanding s. 409.961, the agency shall
81 contract on a prepaid or fixed-sum basis with appropriately
82 licensed prepaid dental health plans to provide dental services.
83 This paragraph expires October 1, 2017 2014.

84 (b) Notwithstanding paragraph (a), the agency may provide a
85 Medicaid prepaid dental health program in Miami-Dade County.

86 ~~(b) Notwithstanding paragraph (a) and for the 2012-2013~~
87 ~~fiscal year only, the agency is authorized to provide a Medicaid~~

37-00179-14

2014340__

88 ~~prepaid dental health program in Miami Dade County. For all~~
89 ~~other counties, the agency may not limit dental services to~~
90 ~~prepaid plans and must allow qualified dental providers to~~
91 ~~provide dental services under Medicaid on a fee-for-service~~
92 ~~reimbursement methodology. The agency may seek any necessary~~
93 ~~revisions or amendments to the state plan or federal waivers in~~
94 ~~order to implement this paragraph. The agency shall terminate~~
95 ~~existing contracts as needed to implement this paragraph. This~~
96 ~~paragraph expires July 1, 2013.~~

97 (c) The agency shall provide a report by January 15 of each
98 year to the Governor, the President of the Senate, and the
99 Speaker of the House of Representatives which compares the
100 combined annual benefits utilization and encounter data reported
101 by all contractors, along with the agency's findings with
102 respect to projected and budgeted annual program costs, the
103 extent to which each contracting entity is complying with all
104 contract terms and conditions, the effect that each entity's
105 operation is having on access to care for Medicaid recipients in
106 the contractor's service area, and the statistical trends
107 associated with indicators of good oral health among all
108 recipients served in comparison with the state's population as a
109 whole.

110 (d) The agency may seek any necessary revisions or
111 amendments to the state plan or federal waivers in order to
112 implement this subsection.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic PREPAID DENTAL PLANS

Bill Number 340
(if applicable)

Name LENA JUAREZ

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. Box 10390

Phone 850 212 8330

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail lena@jejassoc.com

Speaking: For Against Information

Representing MOLINA HEALTHCARE

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)

03/19/14
Meeting Date

Topic Proprietary Dental Plans

Bill Number SB 340 as amended
(if applicable)

Name Michael Garner, Ph.D.

Amendment Barcode _____
(if applicable)

Job Title Gov't Relations

Address 200 W. College Ave., Suite 114
Street

Phone (850) 445-6552

Tallahassee FL 32301
City State Zip

E-mail michael.garner@amerigroup.com

Speaking: For Against Information

Representing Amerigroup Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic Dental carve out

Bill Number 340
(if applicable)

Name Jennifer Hinson

Amendment Barcode _____
(if applicable)

Job Title Director, Gov't Affairs

Address 215 S Monroe 32301

Phone 510-5276

Street

City

State

Zip

E-mail jennifer.hinson@wellcare.cc

Speaking: For Against Information

Representing WellCare Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic Prepaid Dental Plans

Bill Number 340
(if applicable)

Name Casey stoutamire

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St.

Phone 850-224-1089

Street

Tallahassee

City

FL

State

32301

Zip

E-mail Cstoutamire@floridadental.org

Speaking: For Against Information

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.

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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)

3/19/14

Meeting Date

Topic Prepaid Dental Plans

Bill Number 340
(if applicable)

Name Audrey Brown

Amendment Barcode _____
(if applicable)

Job Title President + CEO

Address 200 W. College Ave

Phone _____

Street

Tallahassee FL 32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Association of Health Plans

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)

3/19/14
Meeting Date

Topic SB 340 Bill Number _____ (if applicable)

Name Beth Nunnally Amendment Barcode _____ (if applicable)

Job Title VP External Relations

Address 301 S. Bronough Suite 500 Phone 850 567 9610

Tallahassee FL City State Zip E-mail _____

Speaking: For Against Information

Representing Sunshine Health Plan

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic Prepaid Dental Plans

Bill Number 340
(if applicable)

Name Casey Stoutamire

Amendment Barcode 571126
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St.
Street

Phone 850-224-1089

Tallahassee, FL 32301
City State Zip

E-mail astoutamire@floridadental.org

Speaking: For Against Information

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Mar. 19, 2014
Meeting Date

Topic Prepaid Dental Plans

Bill Number SB 340
(if applicable)

Name Joe Amthart

Amendment Barcode 722784
(if applicable)

Job Title Director of Governmental Affairs

Address 118 E. Jefferson St.
Street

Phone (850) 224-1089

Tallahassee, FL 32301
City State Zip

E-mail jahart@floridabond.org

Speaking: For Against Information

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 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs



Subject: Committee Agenda Request

Date: January 9, 2014

I respectfully request that **Senate Bill #340**, relating to Prepaid Dental Plans, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

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 Community Affairs

BILL: SB 1102

INTRODUCER: Senator Altman

SUBJECT: Local Government Infrastructure Surtax

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 1102 provides that the Local Government Infrastructure Surtax (surtax) may be used for a project involving the capital restoration or maintenance of natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels connected to natural water bodies. The proceeds from the surtax, or the bonds pledging the surtax, may only be used for the project if a countywide referendum approves the county's exclusive use of the surtax for such use.

The bill also specifies that expenditures may include the cost of planning, engineering, equipment, improvements required to reduce pollutant source input, restoration of natural filtration systems, dredging operations related to economically or ecologically beneficial muck removal, or any other activities deemed necessary to implement the county's restoration or maintenance plan.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the six percent state sales tax, the Florida Statutes authorize counties to charge discretionary sales surtaxes,¹ which must be specifically designated by statute.²

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes, including the Local Government Infrastructure Surtax.

Discretionary sales surtax applies to transactions when:

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.

¹ A local discretionary sales surtax may also be known as a local option county sales tax. A surtax is an "additional tax imposed on something being taxed or on the primary tax itself." BLACK'S LAW DICTIONARY 704 (3rd ed. 2006).

² Sections 212.054, 212.055, F.S.

- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a surtax county. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is in a county with a surtax.

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.³ The sales tax rate may be 0.5 percent or 1.0 percent.⁴ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.⁵

The proceeds of the surtax must be expended by the school district; by the county or cities within the county; or, in the case of a negotiated joint county agreement, by the county within another county to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.⁶

Counties are also authorized to use surtax proceeds for other purposes under certain circumstances. Proceeds and accrued interest may not be used for the operational expenses of infrastructure.⁷ The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for

³ Section 212.055(2)(a)1., F.S.

⁴ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent. Section 212.055(2)(h), F.S.

⁵ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

⁶ Section 212.055(2)(d), F.S.

⁷ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds because they are more in the nature of day-to-day operational expenses.⁸

However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving both the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.⁹

While all counties are authorized to levy the surtax, only seventeen counties currently do so. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Fifteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla. During the 2013-14 fiscal year, these counties received combined county revenues of \$618,621,561. During the 2014-15 fiscal year, these counties are expected to receive combined county revenues of \$650,171,261.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 212.055, F.S., to provide that the Local Government Infrastructure Surtax may be used for a project involving the capital restoration or maintenance of natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels connected to natural water bodies. The proceeds from the surtax, or the bonds pledging the surtax, may only be used for the project if a countywide referendum approves the county's exclusive use of the surtax for such use.

The bill specifies that expenditures may include the cost of planning, engineering, equipment, improvements required to reduce pollutant source input, restoration of natural filtration systems, dredging operations related to economically or ecologically beneficial muck removal, or any other activities deemed necessary to implement the county's restoration or maintenance plan.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸ Op. Att'y Gen. Fla. 94-79 (1994).

⁹ Op. Att'y Gen. Fla. 2012-19 (2012).

¹⁰ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (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:

The bill does not appear to have a fiscal impact on state or local government because it does not provide additional taxing authority. However, the bill does allow counties to use surtax proceeds for an additional purpose.

The Department of Revenue has analyzed the bill and determined it has no impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 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 Altman

16-01091A-14

20141102__

1 A bill to be entitled
2 An act relating to the local government infrastructure
3 surtax; amending s. 212.055, F.S.; authorizing the use
4 of the surtax for the restoration or maintenance of
5 natural water bodies for public use; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (i) is added to subsection (2) of
11 section 212.055, Florida Statutes, to read:

12 212.055 Discretionary sales surtaxes; legislative intent;
13 authorization and use of proceeds.—It is the legislative intent
14 that any authorization for imposition of a discretionary sales
15 surtax shall be published in the Florida Statutes as a
16 subsection of this section, irrespective of the duration of the
17 levy. Each enactment shall specify the types of counties
18 authorized to levy; the rate or rates which may be imposed; the
19 maximum length of time the surtax may be imposed, if any; the
20 procedure which must be followed to secure voter approval, if
21 required; the purpose for which the proceeds may be expended;
22 and such other requirements as the Legislature may provide.
23 Taxable transactions and administrative procedures shall be as
24 provided in s. 212.054.

25 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

26 (i) Notwithstanding paragraph (d), if a countywide
27 referendum approves the county's exclusive use of the surtax for
28 a project involving the capital restoration or maintenance of
29 natural water bodies for public use, including tributaries,

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30 canals, stormwater conveyance systems, and channels connected to
31 such natural water bodies, the proceeds from the surtax, or the
32 bonds pledging the surtax for such use, may be used for such
33 purpose. Expenditures may include the cost of planning,
34 engineering, equipment, improvements required to reduce
35 pollutant source input, restoration of natural filtration
36 systems, dredging operations related to economically or
37 ecologically beneficial muck removal, or any other activities
38 deemed necessary to implement the county's restoration or
39 maintenance plan.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic LOCAL GOVERNMENT INFRASTRUCTURE SETBACK Bill Number 1102 (if applicable)

Name DAVIN SUGGS Amendment Barcode (if applicable)

Job Title SR. LEGISLATIVE ADVOCATE (if applicable)

Address 100 S. MONROE ST Phone 850-320-2635

Tallahassee FL 32301 (Street, City, State, Zip)

E-mail

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

Representing FL ASSOC. OF COUNTIES

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic INFRASTRUCTURE SLES TAX Bill Number SB 1102
(if applicable)

Name KURT SPITZER Amendment Barcode _____
(if applicable)

Job Title EXEC DIRECTOR

Address 719 E PARK Phone 228 6212
Street

T 32301
City State Zip

E-mail KURTSPITZER@KSA.NET
NET

Speaking: For Against Information

Representing FLA. STORMWATER ASSOC.

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

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR THAD ALTMAN

16th District

COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

SELECT COMMITTEE

Indian River Lagoon and Lake Okeechobee

JOINT COMMITTEE:

Public Council Oversight Committee

February 24, 2014

The Honorable Wilton Simpson
Senate Committee on Community Affairs, Chair
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simpson:

I respectfully request that SB 1102, related to *Local Government Infrastructure Surtax*, 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,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

cc: Tom Yeatman, Staff Director, 315 Knott Building
Ann Whittaker, Committee Administrative Assistant

TA/svb

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 612

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hays

SUBJECT: Government Contracting

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 612 provides that state law preempts and supersedes any local ordinance or regulation that gives preference to a local contractor if a competitive solicitation for personal property or construction services utilizes state funds to pay for 20 percent or more of the total cost.

The bill requires a political subdivision of the state to disclose in the solicitation document of a competitive solicitation subject to this section whether payment will come from funds appropriated by the state and, if known, the amount or proportion of such funds.

The bill also creates a new section in ch. 287, F.S., requiring state agencies to report contract problems, fines, defaults, and terminations to the Department of Management Services (DMS), and for the DMS to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list. Agencies must consider the fact of a vendor's status on any of the lists in evaluating competitive solicitations. Local governments may participate in the vendor reporting provisions.

The bill requires Florida agencies to update the Florida Accountability Contract Tracking System website with information regarding contractors on any of the above-described lists within 30 calendar days of executing a contract with that contractor.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property² and services. The DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.³ The DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁴

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁵

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

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁶ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

² "Personal property" is not independently defined for purposes of ch. 287, F.S., but the title of the chapter is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

³ See ss. 287.032 and 287.042, F.S.

⁴ *Id.*

⁵ See ss. 287.012(6) and 287.057, F.S.

⁶ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

Vendor Reporting

The DMS has some limited general authority in terms of policing vendors that aren't adequately performing their contractual duties. The DMS currently maintains a convicted vendor list, suspended vendor list, and a vendor complaint list.⁷ The DMS must maintain the convicted vendor list pursuant to s. 287.133, F.S., which prohibits persons convicted of public entity crimes from being awarded contracts, and requires the DMS to place people on the list using an administrative process.⁸ The DMS maintains the suspended vendor list pursuant to its general authority to "remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state."⁹ The suspended vendor list consists of vendors whose contracts have been found in default by state agencies.¹⁰ The vendor complaint list consists of all formal vendor complaints issued to vendors by state agencies and received by the DMS.¹¹ There appears to be no general statutory requirement mandating that agencies formally report to the DMS when agencies experience problems with vendors, or terminate vendors due to contract nonperformance.

Though s. 287.133, F.S., allows the DMS to place persons convicted of public entity crimes against political subdivisions on the convicted vendor list, when political subdivisions terminate vendors for cause due to contract nonperformance issues, there is no statutory requirement mandating the reporting of such actions to the DMS.

Contract Tracking

Pursuant to s. 215.985(14), F.S., the Chief Financial Officer (CFO) is required to establish and maintain a publically-available contract tracking system. Within 30 days of contract execution, each state entity must submit specified information to the CFO's website.¹² The information to be posted must include:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and ending dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.

⁷ See The Florida Department of Management Services, Convicted/Suspended/Discriminatory/Complaints Vendor Lists website, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists (last visited March 12, 2014).

⁸ As of March 12, 2014, nobody is listed on the convicted vendor list, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list.

⁹ Section 287.042(1)(b), F.S. The administrative rule implementing this authority is Rule 60A-1.006(2), F.A.C.

¹⁰ As of March 12, 2014, there are 89 vendors on the suspended vendor list, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/suspended_vendor_list.

¹¹ As of March 12, 2014, four vendors are on this list, available at

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/vendor_complaint_list.

¹² The system is called the Florida Accountability Contract Tracking System (FACTS), available at <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited March 12, 2014).

- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract performance measures.
- If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competitive solicitation, if any.
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential or exempt information.

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The department is responsible for establishing by rule the following:¹³

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹⁴ Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must submit the project to competitive bidding if the projected cost is in excess of \$300,000.¹⁵

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Weekly¹⁶ at least 21 days prior to the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Weekly, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to add a requirement that each state entity agreeing to a contract post to the FACTS website within 30 days of the agreement whether the contractor was

¹³ Section 255.29, F.S.

¹⁴ See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

¹⁵ See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

¹⁶ The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

¹⁷ For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

listed on the vendor complaint list, suspended vendor list, or terminated vendor list under s. 287.1335, F.S., at the time the contract was initially entered into. Section 287.1335 is created by this bill.

Section 2 amends s. 287.084, F.S., to preempt any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for personal property or construction services and that solicitation provides that 20 percent or more of the cost is to be paid from state-appropriated funds.

In any competitive solicitation subject to this provision, the public entity must disclose in the solicitation document whether payment will come from state-appropriated funds, and the amount of such funds or the percentage of such funds compared to the total cost of the personal property or construction services.

The bill also deletes a provision that stated the term “other political subdivision of this state” as used in this section did not include counties or municipalities. Therefore, the state preference for procurement of personal property through competitive solicitation would now apply to counties and municipalities.

Section 3 creates s. 287.1335, F.S., to require that agencies report to DMS on certain actions taken with regard to contract vendors. Local governmental entities are permitted, but not required, to report these vendor actions to the DMS.

The DMS is required to compile and maintain the following three lists, and provide public access to the lists through its website:

- A “suspended vendor list” of all vendors whose ability to bid or perform state or local government contracts has been temporarily suspended by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A “terminated vendor list” of all reported vendors whose contracts have been terminated by an agency or a participating local governmental entity due to a contract default by the vendor or for other good cause.
- A “vendor complaint list” of complaints that have been issued to vendors by an agency or participating local governmental entity.

The bill defines “vendor” as an entity or person in a contractual relationship with an agency or a local governmental entity.

Agencies must, and local governmental entities may, provide the DMS with copies of complaints issued to vendors and the names of suspended and terminated vendors for the vendor complaint list, the suspended vendor list, and the terminated vendor list. Agencies must, and local governmental entities may, report quarterly to the DMS with updated information necessary to maintain the lists. Agencies must report to the DMS all instances of a material breach of a contract or a notice of default and subsequent termination within 30 days after such occurrence. The DMS must maintain and update the above described lists and provide the public with access to them on its website.

Agencies must require that a vendor responding to a competitive solicitation disclose whether the vendor has, within the previous five years, had a contract terminated by a federal, state, or local governmental entity after defaulting on a contract; paid a fine or penalty incurred by nonperformance of a federal, state, or local government contract; or entered into an agreement with a federal, state, or local governmental entity in settlement of any issues related to default or nonperformance of a contract. An agency may consider a vendor's failure to disclose such information in determining whether the vendor is in breach of any resulting contract. Local governmental entities may require such disclosures.

When evaluating bids, proposals, or replies to competitive solicitations, an agency must consider information available on the three lists in determining whether the vendor submitting a response to the competitive solicitation is a responsible and responsive vendor. If an agency enters into a contract with a vendor on any of the three lists, the contract file must contain documentation specifying that the agency's designee with authority to sign the contract was aware that the contracted vendor was named on the list at the time the contract was initially entered into.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring such expenditure is approved by 2/3 of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

In this instance, the bill does not contain a legislative determination that the bill fulfills an important state interest. However, the law, as amended, will apply to all state and local governmental entities in Florida. Arguably, any expenditure required by this bill will be required to comply with a law that applies to all persons similarly situated.

Subsection (d) of Art. VII, Sec. 18, of the State Constitution exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact,"

which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014¹⁸), are exempt.¹⁹

The Revenue Estimating Conference has not met on this bill, so the financial impact is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

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:

Indeterminate. The economic effects caused by preemption of local preference ordinances would be difficult to calculate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a preemption in ch. 287, F.S., that applies to both the procurement of personal property and construction services. Laws related to the procurement of personal property are located in ch. 287, F.S. However, public construction contracting is regulated in ch. 255, F.S. The construction preference preemption would be better placed in ch. 255, F.S.

The DMS probably needs rulemaking authority to implement the vendor reporting requirements.

¹⁸ Based on the Demographic Estimating Conference's final population estimate for April 1, 2014, which was adopted on February 10, 2014. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf> (last visited on March 13, 2014).

¹⁹ See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on March 13, 2013).

The requirement that agencies consider in competitive solicitations whether a vendor is listed on any of the three vendor action lists could offer another avenue for aggrieved vendors to attack agency actions in procurement protests.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.985 and 287.084.

This bill creates section 287.1335 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 Community Affairs on March 19, 2014:

- Deletes the provision that added “construction services” to the state preference for Florida businesses.
- Provides that the state preemption of local preference laws and regulations will only be triggered by competitive solicitations for personal property or construction services that utilize state funds to pay for 20 percent or more of the total cost.

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS adds a new section requiring state agencies to report contract problems, fines, defaults, and terminations to the DMS, and for DMS to maintain a vendor complaint list, a suspended vendor list, and a terminated vendor list. Agencies must consider the fact of a vendor’s status on any of the lists in evaluating competitive solicitations. Local governments may participate in the vendor reporting provisions.

- B. **Amendments:**

None.

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

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1 A bill to be entitled
2 An act relating to government contracting; amending s.
3 215.985, F.S.; revising information to be posted on
4 the Chief Financial Officer's contract tracking system
5 to conform to changes made by the act; amending s.
6 287.084, F.S.; expanding provisions that require an
7 agency, university, college, school district, or other
8 political subdivision of the state to provide
9 preferential consideration to a Florida business in
10 awarding competitively bid contracts to purchase
11 personal property to include the purchase of
12 construction services; providing an exception;
13 requiring counties and municipalities to provide such
14 preferential consideration; providing that for
15 specified competitive solicitations the authority to
16 grant a preference supersedes any local ordinance or
17 regulation that restricts specified contractors from
18 competing for an award based upon certain conditions;
19 requiring a university, college, county, municipality,
20 school district, or other political subdivision to
21 make specified disclosures in competitive solicitation
22 documents; providing that a university, college,
23 county, municipality, school district, or other
24 political subdivision is not prohibited from awarding
25 a contract to a vendor under certain circumstances;
26 amending s. 287.1335, F.S.; defining terms; requiring
27 agencies to provide the Department of Management
28 Services with copies of vendor complaints and names of
29 suspended and terminated vendors; authorizing local

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30 governmental entities to provide such information to
31 the department; requiring the department to maintain
32 certain information regarding vendors on its website;
33 requiring an agency to submit specified information to
34 the department on a quarterly basis; authorizing a
35 local governmental entity to submit such information
36 on the same basis; requiring a vendor responding to an
37 agency's competitive solicitation to disclose certain
38 information; specifying certain requirements for
39 considering a response to a competitive solicitation
40 or entering a contract; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 1. Paragraph (a) of subsection (14) of
45 section 215.985, Florida Statutes, is amended to read:

46 215.985 Transparency in government spending.—

47 (14) The Chief Financial Officer shall establish and
48 maintain a secure contract tracking system available for viewing
49 and downloading by the public through a secure website. The
50 Chief Financial Officer shall use appropriate Internet security
51 measures to ensure that no person has the ability to alter or
52 modify records available on the website.

53 (a) Within 30 calendar days after executing a contract,
54 each state entity shall post the following information relating
55 to the contract on the contract tracking system:

- 56 1. The names of the contracting entities.
- 57 2. The procurement method.
- 58 3. The contract beginning and ending dates.

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- 59 4. The nature or type of the commodities or services
60 purchased.
- 61 5. Applicable contract unit prices and deliverables.
- 62 6. Total compensation to be paid or received under the
63 contract.
- 64 7. All payments made to the contractor to date.
- 65 8. Applicable contract performance measures.
- 66 9. If a competitive solicitation was not used to procure
67 the goods or services, the justification of such action,
68 including citation to a statutory exemption or exception from
69 competitive solicitation, if any.
- 70 10. Electronic copies of the contract and procurement
71 documents that have been redacted to exclude confidential or
72 exempt information.
- 73 11. Whether the contractor was listed on the vendor
74 complaint list, suspended vendor list, or terminated vendor list
75 under s. 287.1335 at the time the contract was initially entered
76 into.
- 77 Section 2. Subsection (1) of section 287.084, Florida
78 Statutes, is amended to read:
- 79 287.084 Preference to Florida businesses.—
- 80 (1) (a) If ~~When~~ an agency, university, college, school
81 district, or other political subdivision of the state is
82 required to make purchases of personal property or construction
83 services through competitive solicitation and the lowest
84 responsible and responsive bid, proposal, or reply is by a
85 vendor whose principal place of business is in a state or
86 political subdivision thereof which grants a preference for the
87 purchase of such personal property or construction services to a

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88 person whose principal place of business is in such state, then
89 the agency, university, college, school district, or other
90 political subdivision of this state shall award a preference to
91 the lowest responsible and responsive vendor having a principal
92 place of business within this state, which preference is equal
93 to the preference granted by the state or political subdivision
94 thereof in which the lowest responsible and responsive vendor
95 has its principal place of business. In a competitive
96 solicitation in which the lowest bid is submitted by a vendor
97 whose principal place of business is located outside the state
98 and that state does not grant a preference in competitive
99 solicitation to vendors having a principal place of business in
100 that state, the preference to the lowest responsible and
101 responsive vendor having a principal place of business in this
102 state shall be 5 percent.

103 (b) To ensure the availability of federal aid funds,
104 paragraph (a) does not apply to contracts for transportation
105 projects procured by the Department of Transportation ~~for which~~
106 ~~federal aid funds are available.~~

107 (c)1. For a competitive solicitation in which payment for
108 the personal property or construction services is to be made in
109 whole or in part from funds appropriated by the state, this
110 section preempts and supersedes any local ordinance or
111 regulation that restricts a contractor certified under s.
112 489.105(8) from competing for an award based upon:

113 a. The vendor maintaining an office or place of business
114 within a particular local jurisdiction;

115 b. The vendor hiring employees or subcontractors from
116 within a particular local jurisdiction; or

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117 c. The vendor's prior payment of local taxes, assessments,
118 or duties within a particular local jurisdiction.

119 2. In any competitive solicitation subject to this section,
120 a university, college, county, municipality, school district, or
121 other political subdivision of this state shall disclose in the
122 solicitation document whether payment will come from funds
123 appropriated by the state and, if known, the amount of such
124 funds or the percentage of such funds as compared to the
125 anticipated total cost of the personal property or construction
126 services.

127 3. Except as provided in subparagraph 1., this section does
128 not prohibit a university, college, county, municipality, school
129 district, or other political subdivision of this state from
130 awarding a contract to a vendor in accordance with applicable
131 state laws or local ordinances or regulations.

132 ~~(c) As used in this section, the term "other political~~
133 ~~subdivision of this state" does not include counties or~~
134 ~~municipalities.~~

135 Section 3. Section 287.1335, Florida Statutes, is created
136 to read:

137 287.1335 Vendors; reporting by agencies and local
138 governmental entities.-

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

140 (a) "Suspended vendor list" means a list compiled by the
141 department of all reported vendors whose ability to bid or
142 perform state or local government contracts has been temporarily
143 suspended by an agency or a participating local governmental
144 entity due to a contract default by the vendor or for other good
145 cause.

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146 (b) "Terminated vendor list" means a list compiled by the
147 department of all reported vendors whose contracts have been
148 terminated by an agency or a participating local governmental
149 entity due to a contract default by the vendor or for other good
150 cause.

151 (c) "Vendor" means an entity or person in a contractual
152 relationship with an agency or a local governmental entity.

153 (d) "Vendor complaint list" means a list compiled by the
154 department of complaints that have been issued to vendors by an
155 agency or participating local governmental entity.

156 (2) An agency shall provide the department with copies of
157 complaints issued to vendors and the names of suspended and
158 terminated vendors for the vendor complaint list, the suspended
159 vendor list, and the terminated vendor list, respectively. A
160 local governmental entity may provide such information to the
161 department.

162 (3) The department shall maintain and update, on its
163 website, the vendor complaint list, the suspended vendor list,
164 and the terminated vendor list. In addition, the department
165 shall provide public access through its website of copies of
166 complaints issued to a vendor by an agency or participating
167 local governmental entity.

168 (4) An agency shall provide the department each quarter
169 with updated information necessary to maintain the vendor
170 complaint list, the suspended vendor list, and the terminated
171 vendor list. A local governmental entity may provide such
172 information to the department each quarter. An agency shall
173 report to the department all instances of a material breach of a
174 contract or a notice of default and subsequent termination

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175 within 30 days after such occurrence.

176 (5) (a) An agency shall require that a vendor responding to
177 a competitive solicitation disclose whether the vendor has,
178 within the previous 5 years, had a contract terminated by a
179 federal, state, or local governmental entity after defaulting on
180 a contract; paid a fine or penalty incurred by nonperformance of
181 a federal, state, or local government contract; or entered into
182 an agreement with a federal, state, or local governmental entity
183 in settlement of any issues related to default or nonperformance
184 of a contract. An agency may consider a vendor's failure to
185 disclose such information in determining whether the vendor is
186 in breach of any resulting contract.

187 (b) A local governmental entity may require such
188 disclosures from a vendor in response to a competitive
189 solicitation.

190 (6) When evaluating bids, proposals, or replies to
191 competitive solicitations, an agency must consider information
192 available on the vendor complaint list, suspended vendor list,
193 and terminated vendor list in determining whether the vendor
194 submitting a response to the competitive solicitation is a
195 responsible and responsive vendor. If an agency enters into a
196 contract with a vendor on the vendor complaint list, suspended
197 vendor list, or terminated vendor list, the contract file must
198 contain documentation specifying that the agency's designee with
199 authority to sign the contract was aware that the contracted
200 vendor was named on the vendor complaint list, suspended vendor
201 list, or terminated vendor list at the time the contract was
202 initially entered into.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic _____

Bill Number 612
(if applicable)

Name JESS MCCARTY

Amendment Barcode _____
(if applicable)

Job Title Ass't County Atty

Address 111 NW 1st St 2B10

Phone 305-979-7110

Street
Miami 33120
City State Zip

E-mail JMM2@MIAMI1000.GOV

Speaking: For Against Information

Representing MIAMI - DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/19/14
Meeting/Date

Topic Gov. Contracting Bill Number SB 612
(if applicable)

Name Richard Watson Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038 Phone 850 222 0000
Street

Tallahassee, FL 32302 E-mail rick@watsonand
City State Zip associates.com

Speaking: For Against Information

Representing Associated Builders and Contractors of FL

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Government Contracting

Bill Number SB 612
(if applicable)

Name Amy Datz

Amendment Barcode _____
(if applicable)

Job Title Retired State employee

Address 1130 Crestview Ave

Phone 850 322-7599

Tallahassee FL 32303
City State Zip

E-mail amaliadatz@mac.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/14
Meeting Date

Topic SB 612 Bill Number 612
Name Casey Cook Amendment Barcode _____
Job Title Legislative Advocate (if applicable)
Address PO Box 1757 Phone 850 701 3701
Street City Tallahassee State FL Zip 32302 E-mail ccook@flcities.com

Speaking: For Against Information

Representing Florida League of Cities

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic BID PREFERENCES Bill Number SB-612
(if applicable)

Name J.B. CLARK Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 2091 CYNTHIA DRIVE Phone 850-556-8143
Street

TAU, FL 32303 E-mail _____
City State Zip

Speaking: For Against Information

Representing FL. BUILDING TRADES COUNCIL

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

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

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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)

03/19/2014

Meeting Date

Topic Government Contracting

Bill Number SB 0612
(if applicable)

Name William Perry

Amendment Barcode _____
(if applicable)

Job Title Communications

Address 5405 Ike Smith Rd.

Phone (813)986-9121

Plant City FL 33565
City State Zip

E-mail perryman86@yahoo.com

Speaking: For Against Information

Representing IBEW 824

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Government Contracting

Bill Number 0612
(if applicable)

Name Val Smith

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9822 Lema Ct

Phone 727-375-5046

Street

New Port Richey FL 34655

City

State

Zip

E-mail jay_val@msn.com

Speaking: For Against Information

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Gov Contracting

Bill Number ^{SB} 0612
(if applicable)

Name Jason Smith

Amendment Barcode _____
(if applicable)

Job Title Cable Splicer

Address 9822 Lema ct
Street

Phone 727 457 7876

NPR FL 34655
City State Zip

E-mail SendtoBeme727@gmail.com

Speaking: For Against Information

Representing International Brotherhood of Electrical Workers, local 824

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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THE FLORIDA SENATE
APPEARANCE RECORD

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3/19/14
Meeting Date

Topic GOVERNMENT CONTRACTING

Bill Number SB 0612
(if applicable)

Name RAYMOND DAVIS

Amendment Barcode _____
(if applicable)

Job Title Retired

Address 643 POINSETTIA DR

Phone 727-475-8512

Street

LARGO FL 33770

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic Government Contracting

Bill Number SB 0612
(if applicable)

Name CAROLYN DAVIS

Amendment Barcode _____
(if applicable)

Job Title Retired R.N.

Address 643 POINSETTIA DR.

Phone 727-475-8512

Street

LARGO FL 33770

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Government Contracting

Bill Number SB 0612
(if applicable)

Name Gayle Roberts

Amendment Barcode _____
(if applicable)

Job Title School Board Broward County Food & Nutrition Manager

Address 2265 S.W. 33rd Way

Phone 954-683-7312

Street

Ft. Lauderdale FL 33312

City

State

Zip

E-mail gayle.roberts@broward
schools.com

Speaking: For Against Information

Representing Self

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-14-14

Meeting Date

Topic Government Contracting

Bill Number 612
(if applicable)

Name Vincent Graham

Amendment Barcode _____
(if applicable)

Job Title Deputy Sheriff

Address P.O. Box 934631

Phone _____

Street

Margate Fl 33093
City State Zip

E-mail _____

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic GOVERNMENT CONTRACTING

Bill Number 612
(if applicable)

Name ANTHONY MALLEANO

Amendment Barcode _____
(if applicable)

Job Title SERGEANT (SHERIFF)

Address 10221 DORCHESTER DR.

Phone _____

Street

BOCA RATON FL 33428

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Wilton Simpson, Chair
Community Affairs Committee
CC: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 612 – Preference in the Award of State Contracts

Date: March 6, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 320

INTRODUCER: Senators Sachs and Margolis

SUBJECT: Commercial Parasailing

DATE: March 16, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
3.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable

I. Summary:

SB 320 creates regulations for commercial parasailing. The bill establishes minimum requirements for liability insurance, including bodily injury liability coverage in the amounts of at least \$1 million per occurrence and \$2 million annual aggregate.

The bill requires that the operator of the vessel engaged in commercial parasailing evaluate weather conditions and wind speeds as defined in the bill and maintain a weather log. The bill prohibits commercial parasailing under certain weather conditions. The bill requires that the vessel operator have licensure from the United States Coast Guard appropriate for the number of passengers and the displacement of the vessel.

The bill creates a second-degree misdemeanor for violations of the bill.

The bill makes technical changes to conform statutory cross-references.

II. Present Situation:

Parasailing Activity

The Florida Fish and Wildlife Conservation Commission (FWC) estimates there are approximately 100 active commercial parasail operators in Florida, generally operating along the Atlantic Ocean and Gulf of Mexico coastlines.¹ One exception is at Walt Disney World where parasailing takes place on Bay Lake, in Orange County.²

¹2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

² *Id.*

Data compiled by the FWC indicates that:³

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels occurred in Florida, resulting in 23 injuries and 6 fatalities;
- In 10 of the accidents, high winds or sudden wind gusts were a contributing factor;
- In 6 of the 10 accidents with wind as a contributing factor, there was equipment failure as a result of wind;
- The boating accident reports state that many of the wind gusts were produced by sudden thunderstorms in the area of the parasailing operation;
- The other 11 accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was also a contributing factor in one fatal accident in 2012. The investigation revealed the personal harness was in poor condition and was unable to sustain the stress of supporting an individual under a parasail.

July 1, 2013 Incident

The most recent incident occurred in Panama City Beach on July 1, 2013.⁴ Two Indiana teenage girls were parasailing when weather conditions caused the vessel to lose connection and control of the parasail. The teenagers were critically injured after they were detached from the boat then hit a building, power line and a parked car.⁵ As of August 6, 2013, both teens were released from the hospital but may require additional surgeries.

The United States Coast Guard's (USCG) report of the July 1, 2013, incident identifies the vessel involved as the "Why Knot" and the owner as Aquatic Adventures.⁶ Aquatic Adventures owns ten parasailing vessels in Panama City, Florida, and while not a member of a parasail organization, it uses the Water Sports Industry Association (WSIA) Parasail Training Manual as part of its captain training program.⁷ The USCG report found that facts contributing to this accident included:

- The vessel operators' failure to become aware of and respond appropriately to weather conditions;
- Using equipment in a way that deviated from product instructions and the WSIA Parasail Training manual; and
- Failure to adhere to WSIA proximity to shore guidelines.⁸

The captain and employees of Aquatic Adventures failed to consult all available data, including weather radar data that would have warned of an approaching severe weather system.⁹ Although

³ *Id.*

⁴ United States Coast Guard, *UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach* (July 18, 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (Last visited March 12, 2014).

⁵ Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasai.html (Last visited March 12, 2014).

⁶ United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V "Why Knot" Personal Injury on 07/01/2013*, 4 (Dec. 16, 2013).

⁷ *Id.*

⁸ *Id.* at 29-30.

⁹ *Id.* at 11-12 and 31.

“Why Knot” was equipped with an operational VHF Marine Band Radio, Aquatic Adventures employees relied only on handheld radios to collaborate on conditions.¹⁰

The parasail used during the incident is described as a 39 foot parasail canopy¹¹ manufactured in 2012 and designed to operate in winds not greater than 12 to 14 miles per hour.¹² “Why Knot” was built in 1998 when parasail sizes were typically smaller and carried less wind resistance. The winch mechanism used to pull in the parasail did not include a hydraulic break, a feature included in new winch systems.¹³ According to the USCG, the combination of parasail size and wind conditions may have exceeded the capabilities of the winch.¹⁴

The WSIA Parasail Training Manual indicates appropriate distance from the shoreline to conduct parasailing operations, given wind speed and towline length in order to provide time and space for reactive measures.¹⁵ According to the USCG, due to the inappropriate proximity of the vessel to the shoreline, the captain was not able to maneuver the vessel in a way to prevent the towline from disconnecting.

The USCG issued a Marine Safety Alert regarding parasailing operations on July 22, 2013, noting that a series of parasail incidents involving weather conditions and equipment maintenance since 2006 had resulted in 11 deaths and 52 injuries.¹⁶ The alert referenced the “Standard Guide for Monitoring Weather Conditions for Safe Parasail Operation,”¹⁷ that was adopted by the industry.¹⁸ The industry is currently working on standards for crew requirements, equipment specifications, and owner/operator operational guidelines for parasailing operations.¹⁹ However, these standards are voluntary recommendations and there is no enforcement authority in place.

Licensing and Endorsement Suggestion by United States Coast Guard

According to the USCG, there are currently no regulations specifically pertaining to parasail equipment, and operators/owners choose equipment based on industry standards that vary by location and vessel type. There are also no regulations providing appropriate weather conditions to conduct parasail operations nor regulations requiring operators to monitor the prevailing or forecasted weather conditions.²⁰ Currently, the USCG promotes parasail safety by reactive rather than proactive measures, for example, taking action against the license of an operator for acts of misconduct or negligence or pursuing civil or criminal penalties when appropriate for negligent

¹⁰ *Id.* at 7.

¹¹ *Id.* at 21. Larger parasails, such as those between 39 and 42 feet in diameter, have become more popular due to their ability to carry more weight in lighter wind conditions.

¹² *Id.* at 6.

¹³ *Id.* at 21.

¹⁴ *Id.* at 18 and 21.

¹⁵ *Id.* at 30.

¹⁶ USCG, *Marine Safety Alert, Assistant Commandment for Prevention Policy: Parasailing Operations* (July 22, 2013) available at <http://www.uscg.mil/d7/sectmiami/pdf/KYRSafetyAlert.pdf> (Last visited March 12, 2014).

¹⁷ Developed by ASTM International, formerly known as the American Society for Testing and Materials (ASTM).

¹⁸ See ASTM Standard F2993-13 published on April 1, 2013 at <http://www.astm.org/Standards/F2993.htm> (Last visited March 12, 2014).

¹⁹ See ASTM Subcommittee F24.65 on Parasailing at <http://www.astm.org/COMMIT/SUBCOMMIT/F2465.htm> (Last visited March 12, 2014).

²⁰ USCG, *Report of Investigation*, at 31.

operations.²¹ The USCG suggests that proactive initiatives to require vessels to hold a parasailing endorsement could aid in preventing future parasailing accidents.²²

Under 46 U.S.C. s. 7101, the USCG has the authority and discretion to issue a license to an inspected²³ or uninspected vessel based on the applicant's ability to operate a vessel for particular service. In issuing a license, the Coast Guard can consider qualifications that are necessary, reasonable, and related to a profession, which may include suitable career patterns and other qualifying requirements appropriate to the particular industry of operation.²⁴

Parasailing requires operators to perform functions beyond the level of a traditional passenger vessel. Therefore, as noted above, the USCG may consider necessary, reasonable, and related qualifications to the parasailing industry during the licensing process, effectively addressing known or latent unsafe conditions prior to a harmful occurrence.²⁵ According to the USCG, requirement of a parasail endorsement might provide a means of determining and verifying professional qualifications necessary to serve on a particular vessel, as well as require actions on the part of parasail operators instead of solely relying on their ability to implement voluntary industry standards.²⁶

Current Regulation

Section 327.37, F.S., requires vessels towing persons on water skis, parasails, aquaplanes, or similar activities (watersports) to meet the following safety requirements when operating in state waters.

- There must be a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel must be equipped with a wide-angle rear view mirror mounted that permits the operator of the vessel to observe the progress of the person being towed. Use of a wide angle mirror does not satisfy this requirement for a vessel towing a person attached to a parasail or similar device.
- Water sports may not be conducted from one-half hour after sunset to one-half hour before sunrise.
- A noninflatable type I, type II, type III, or type V personal flotation device approved by the USCG must be worn by those engaged in water sports;
- A person may not operate or manipulate any vessel, tow rope, or other device to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing; and
- A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

²¹ *Id.* at 34. See 46 U.S.C s. 7701 and 46 U.S.C. s. 2304.

²² *Id.* at 32.

²³ The Coast Guard inspects commercial passenger vessels carrying six or more passengers for hire under 46 C.F.R. Subchapter T - Small Passenger Vessels, (Parts 175 – 187).

²⁴ USCG, *Report of Investigation*, at 32.

²⁵ *Id.*

²⁶ *Id.*

A violation of s. 327.37, F.S., is a noncriminal infraction.²⁷ The civil penalty that may be imposed in county court is \$50. However, any person who fails to appear or otherwise properly respond to the boating citation, shall also be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second-degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

According to the FWC, the Federal Aviation Administration (FAA) regulates parasails as kites because a parasail is a parachute held aloft by wind resulting from the movement of the boat towing it.²⁸ Because parasails impact national airspace, the FAA feels that it has a responsibility to regulate parasails “to maintain a safe atmosphere for the flying public.”²⁹ Unless waived, the regulations provide that no person may operate a parasail:³⁰

- Less than 500 feet from the base of any cloud;
- More than 500 feet above the surface of the earth;
- From an area where the ground visibility is less than 3 miles; or
- Within 5 miles of the boundary of any airport.

Even if the parasail operation meets the regulations set by the FAA, for parasail operations flying over 150 feet the operator is still required to give the following information to the nearest FAA air traffic control facility at least 24 hours before the operation:

- The names and addresses of the owners and operators;
- The size and weight of the parasail;
- The location of the operation;
- The height above the surface of the earth at which the parasail is to be operated; and
- The date, time, and duration of the operation.

Additionally, the parasail must have colored pennants at 50 foot intervals or less, starting at 150 feet above the surface of the earth that are visible for at least 1 mile, if it is operated between sunrise and sunset.³¹

A parasail operator may obtain a certificate of authorization or a waiver from the FAA containing special provisions allowing deviation from the regulations.³² According to the FWC, common special provisions imposed by the FAA are:³³

- Attendance by parasail operators at an annual operator safety and standardization meeting sponsored by the FAA, if available in the area, and if an operator is unable to attend a scheduled annual meeting, the operator must arrange for an individual meeting;
- Prohibitions against conducting parasail operations when the ceiling is less than 1,000 feet above ground level, the ground visibility is less than 2 miles, winds are above 20 miles per hour, or gusts of wind are occurring at 15 miles per hour or greater;

²⁷ Section 327.73(1)(i), F.S.

²⁸ See 14 C.F.R. Part 101.

²⁹ FAA, *Air Traffic Bulletin*, Issue #2012-2 (April 2012), available at http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf (last visited March 12, 2014).

³⁰ 14 C.F.R. Part 101.13.

³¹ 14 C.F.R. Part 101.17.

³² 14 C.F.R. Part 101.3.

³³ See *supra* note 1.

- Time restrictions including a prohibition on parasail operations between sunset and sunrise or during any period when a suspension of airport traffic or diversion of other aircraft will cause a hardship to scheduled air carrier operations;
- Distance limits requiring that parasail operations not be conducted closer than 500 feet to any aircraft, and the parasail not be maneuvered so as to force any aircraft toward the swim line (an imaginary line along the coast marking the offshore boundary where most people are likely to swim) or a populated beach;
- Requirements that parasail operators yield the right-of-way to all aircraft;
- Constant observation by the vessel captain and all crew members of the parasail and surrounding airspace to ensure safety, with the observers in a position to observe the operation and airspace and to halt or restrict the parasail operations if necessary; and
- Requirements that the holder of the certificate of waiver or authorization contact the air traffic control tower of an airport when proposed parasail operations are to be conducted within 5 miles of the airport at least one week prior to conducting parasail operations for the purpose of providing real-time notice of activities including the proposed area of operation, the duration of the activity, and the altitude of the parasail.

III. Effect of Proposed Changes:

Section 1 of the bill provides that the title for the act is the White-Miskell Act. The bill is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

Section 2 of the bill amends s. 327.02, F.S., to define “commercial parasailing” as the towing, for consideration, of a person by a motorboat when one or more persons are tethered to the vessel, ascend above the water, and remain suspended under a canopy while the vessel is underway (excluding ultralight gliders). The bill also defines “sustained wind speed” as a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

Section 3 of the bill creates s. 327.375, F.S., to regulate commercial parasailing.

The owner or operator of a vessel must obtain and maintain minimum bodily injury liability insurance coverage of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration. The insurance carrier’s name and address and the policy number be made available to customers requesting that information.

The operator of a vessel must have a current and valid license issued by the USCG which is appropriate for the number of passengers and displacement of the vessel.

A parasailing vessel must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather forecasts and current weather conditions. An operator must use all available means to determine weather conditions and record

this information in a weather log each time passengers are to be taken out on the water. The log must be available for inspection at all times at the operator's place of business.

The bill prohibits commercial parasailing during wind speeds that exceed 20 miles per hour, wind gusts 15 miles per hour greater than the sustained wind speed, wind speed during gusts that exceeds 25 miles per hour, if rain or heavy fog reduces visibility to less than 0.5 mile, or when a lightning storm comes within 7 miles of the parasailing area.

A person or operator who violates this section commits a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.³⁴

Sections 4 to 9 amend ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07, F.S., to conform and correct statutory cross-references.

Section 10 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the FWC, some commercial parasailing operators in Florida may incur additional costs to obtain the insurance coverage stated in the bill, and those costs will vary with each operator's claims history and current coverage amounts.³⁵ However, most parasail operators already maintain these levels of insurance.

³⁴ Sections 775.082, and 775.083, F.S., provide that a misdemeanor of the second-degree is punishable by up to 60 days in jail, a fine of up to \$500, or both at the discretion of the court.

³⁵ 2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

C. Government Sector Impact:

According to the FWC, there may be a fiscal impact from costs associated with the FWC law enforcement officers educating current commercial parasailing operators on new regulations and how operators may come into compliance. The impact is estimated to be nominal and can likely be absorbed within existing resources.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.02, 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07.

This bill creates section 327.375 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.

³⁶ *Id.*

By Senator Sachs

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1 A bill to be entitled
2 An act relating to commercial parasailing; providing a
3 short title; amending s. 327.02, F.S.; defining terms;
4 creating s. 327.375, F.S.; requiring the operator of a
5 vessel engaged in commercial parasailing to ensure
6 that specified requirements are met; requiring the
7 owner of a vessel engaged in commercial parasailing to
8 obtain and maintain an insurance policy; providing
9 minimum coverage requirements for the insurance
10 policy; providing requirements for proof of insurance;
11 specifying the insurance information that must be
12 provided upon request; requiring the operator to have
13 a current and valid license issued by the United
14 States Coast Guard; prohibiting commercial parasailing
15 unless certain equipment is present on the vessel and
16 certain weather conditions are met; requiring that a
17 weather log be maintained and made available for
18 inspection; providing a criminal penalty; amending ss.
19 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07,
20 F.S.; conforming cross-references; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. This act may be cited as the "White-Miskell
26 Act."

27 Section 2. Section 327.02, Florida Statutes, is amended to
28 read:

29 327.02 Definitions.—As used in this chapter and in chapter

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30 328, unless the context clearly requires a different meaning,
31 the term:

32 (1) "Airboat" means a vessel that is primarily designed for
33 use in shallow waters and powered by an internal combustion
34 engine with an airplane-type propeller mounted above the stern
35 and used to push air across a set of rudders.

36 (2) "Alien" means a person who is not a citizen of the
37 United States.

38 (3) "Boating accident" means a collision, accident, or
39 casualty involving a vessel in or upon, or entering into or
40 exiting from, the water, including capsizing, collision with
41 another vessel or object, sinking, personal injury, death,
42 disappearance of a any person from on board under circumstances
43 that ~~which~~ indicate the possibility of death or injury, or
44 property damage to any vessel or dock.

45 (4) "Canoe" means a light, narrow vessel with curved sides
46 and with both ends pointed. A canoe-like vessel with a transom
47 may not be excluded from the definition of a canoe if the width
48 of its transom is less than 45 percent of the width of its beam
49 or it has been designated as a canoe by the United States Coast
50 Guard.

51 (5) "Commercial parasailing" means providing or offering to
52 provide, for consideration, any activity involving the towing of
53 a person by a motorboat if:

54 (a) One or more persons are tethered to the towing vessel;

55 (b) The person or persons ascend above the water; and

56 (c) The person or persons remain suspended under a canopy,
57 chute, or parasail above the water while the vessel is underway.

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59 The term does not include ultralight glider towing conducted
60 under rules of the Federal Aviation Administration governing
61 ultralight vehicles as defined in 14 C.F.R. part 103.

62 (6)~~(5)~~ "Commercial vessel" means:

63 (a) A ~~Any~~ vessel primarily engaged in the taking or landing
64 of saltwater fish or saltwater products or freshwater fish or
65 freshwater products, or a ~~any~~ vessel licensed pursuant to s.
66 379.361 from which commercial quantities of saltwater products
67 are harvested, from within and without the waters of this state
68 for sale ~~either~~ to the consumer or to a, retail ~~dealer~~, or
69 wholesale dealer.

70 (b) Any other vessel, except a recreational vessel as
71 defined in this section.

72 (7)~~(6)~~ "Commission" means the Fish and Wildlife
73 Conservation Commission.

74 (8)~~(7)~~ "Dealer" means a ~~any~~ person authorized by the
75 Department of Revenue to buy, sell, resell, or otherwise
76 distribute vessels. Such person must ~~shall~~ have a valid sales
77 tax certificate of registration issued by the Department of
78 Revenue and a valid commercial or occupational license required
79 by any county, municipality, or political subdivision of the
80 state in which the person operates.

81 (9)~~(8)~~ "Division" means the Division of Law Enforcement of
82 the Fish and Wildlife Conservation Commission.

83 (10)~~(9)~~ "Documented vessel" means a vessel for which a
84 valid certificate of documentation is outstanding pursuant to 46
85 C.F.R. part 67.

86 (11)~~(10)~~ "Floating structure" means a floating entity, with
87 or without accommodations built thereon, which is not primarily

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88 used as a means of transportation on water but which serves
89 purposes or provides services typically associated with a
90 structure or other improvement to real property. The term
91 ~~"floating structure"~~ includes, but is not limited to, an ~~each~~
92 entity used as a residence, place of business or office with
93 public access; a hotel or motel; a restaurant or lounge; a
94 clubhouse; a meeting facility; a storage or parking facility;
95 or a mining platform, dredge, dragline, or similar facility or
96 entity represented as such. Floating structures are expressly
97 excluded from the definition of the term "vessel" provided in
98 this section. Incidental movement upon water or resting
99 partially or entirely on the bottom does ~~shall~~ not, in and of
100 itself, preclude an entity from classification as a floating
101 structure.

102 (12) ~~(11)~~ "Florida Intracoastal Waterway" means the Atlantic
103 Intracoastal Waterway, the Georgia state line north of
104 Fernandina to Miami; the Port Canaveral lock and canal to the
105 Atlantic Intracoastal Waterway; the Atlantic Intracoastal
106 Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to
107 Fort Myers; the St. Johns River, Jacksonville to Sanford; the
108 Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf
109 Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to
110 Anclote open bay section, using the ~~using the~~ Gulf of Mexico; the Gulf
111 Intracoastal Waterway, Carrabelle to the Alabama state line west
112 of Pensacola; and the Apalachicola, Chattahoochee, and Flint
113 Rivers in Florida.

114 (13) ~~(12)~~ "Homemade vessel" means a ~~any~~ vessel built after
115 October 31, 1972, for which a federal hull identification number
116 is not required to be assigned by the manufacturer pursuant to

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117 federal law, or a ~~any~~ vessel constructed or assembled before
118 ~~prior to~~ November 1, 1972, by an entity other than a licensed
119 manufacturer for its ~~his or her~~ own use or the use of a specific
120 person. A vessel assembled from a manufacturer's kit or
121 constructed from an unfinished manufactured hull is ~~shall be~~
122 considered to be a homemade vessel if such a vessel is not
123 required to have a hull identification number assigned by the
124 United States Coast Guard. A rebuilt or reconstructed vessel may
125 not ~~shall in no event~~ be construed to be a homemade vessel.

126 (14) ~~(13)~~ "Houseboat" means a any vessel that ~~which~~ is used
127 primarily as a residence for at least ~~a minimum of~~ 21 days
128 during any 30-day period, in a county of this state if such, ~~and~~
129 ~~this~~ residential use of the vessel is to the preclusion of its
130 ~~the use of the vessel~~ as a means of transportation.

131 (15) ~~(14)~~ "Length" means the measurement from end to end
132 over the deck parallel to the centerline, excluding sheer.

133 (16) ~~(15)~~ "Lien" means a security interest that ~~which~~ is
134 reserved or created by a written agreement recorded with the
135 Department of Highway Safety and Motor Vehicles pursuant to s.
136 328.15 and that ~~which~~ secures payment or performance of an
137 obligation and is generally valid against third parties.

138 (17) ~~(16)~~ "Lienholder" means a person holding a security
139 interest in a vessel, which interest is recorded with the
140 Department of Highway Safety and Motor Vehicles pursuant to s.
141 328.15.

142 (18) ~~(17)~~ "Live-aboard vessel" means:

143 (a) A ~~Any~~ vessel used solely as a residence and not for
144 navigation;

145 (b) A ~~Any~~ vessel represented as a place of business or a

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146 professional or other commercial enterprise; or

147 (c) A ~~Any~~ vessel for which a declaration of domicile has
148 been filed pursuant to s. 222.17.

149
150 A commercial fishing boat is expressly excluded from the term
151 "live-aboard vessel."

152 (19) ~~(18)~~ "Livery vessel" means a ~~any~~ vessel leased, rented,
153 or chartered to another for consideration.

154 (20) ~~(19)~~ "Manufactured vessel" means a ~~any~~ vessel built
155 after October 31, 1972, for which a federal hull identification
156 number is required pursuant to federal law, or a ~~any~~ vessel
157 constructed or assembled before ~~prior to~~ November 1, 1972, by a
158 duly licensed manufacturer.

159 (21) ~~(20)~~ "Marina" means a licensed commercial facility that
160 ~~which~~ provides secured public moorings or dry storage for
161 vessels on a leased basis. A commercial establishment authorized
162 by a licensed vessel manufacturer as a dealership is ~~shall be~~
163 considered a marina for nonjudicial sale purposes.

164 (22) ~~(21)~~ "Marine sanitation device" means ~~any~~ equipment,
165 other than a toilet, for installation on board a vessel, which
166 is designed to receive, retain, treat, or discharge sewage, and
167 any process to treat such sewage. Marine sanitation device Types
168 I, II, and III shall be defined as provided in 33 C.F.R. part
169 159.

170 (23) ~~(22)~~ "Marker" means a ~~any~~ channel mark or other aid to
171 navigation, an information or regulatory mark, an isolated
172 danger mark, a safe water mark, a special mark, an inland waters
173 obstruction mark, or mooring buoy in, on, or over the waters of
174 the state or the shores thereof, and includes, but is not

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175 limited to, a sign, beacon, buoy, or light.

176 (24)~~(23)~~ "Motorboat" means a ~~any~~ vessel equipped with
177 machinery for propulsion, irrespective of whether the propulsion
178 machinery is in actual operation.

179 (25)~~(24)~~ "Muffler" means an automotive-style sound-
180 suppression device or system designed to effectively abate the
181 sound of exhaust gases emitted from an internal combustion
182 engine and prevent excessive sound when installed on such an
183 engine.

184 (26)~~(25)~~ "Navigation rules" means, for vessels on:

185 (a) ~~For vessels on~~ Waters outside ~~of~~ established
186 navigational lines of demarcation as specified in 33 C.F.R. part
187 80, the International Navigational Rules Act of 1977, 33 U.S.C.
188 s. 1602, as amended, including the appendix and annexes thereto,
189 through October 1, 2012.

190 (b) ~~For vessels on~~ All waters not outside of such
191 established lines of demarcation, the Inland Navigational Rules
192 Act of 1980, 33 C.F.R. parts 83-90, as amended, through October
193 1, 2012.

194 (27)~~(26)~~ "Nonresident" means a citizen of the United States
195 who has not established residence in this state and has not
196 continuously resided in this state for 1 year and in one county
197 for the 6 months immediately preceding the initiation of a
198 vessel titling or registration action.

199 (28)~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command
200 of, ~~or~~ in actual physical control of a vessel upon the waters of
201 this state, ~~or~~ to exercise control over or to have
202 responsibility for a vessel's navigation or safety while the
203 vessel is underway upon the waters of this state, or to control

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204 or steer a vessel being towed by another vessel upon the waters
205 of the state.

206 (29)~~(28)~~ "Owner" means a person, other than a lienholder,
207 having the property in or title to a vessel. The term includes a
208 person entitled to the use or possession of a vessel subject to
209 an interest in another person which is~~is~~ reserved or created by
210 agreement and securing payment of performance of an obligation.~~.~~
211 ~~but~~ The term does not include ~~excludes~~ a lessee under a lease
212 not intended as security.

213 (30)~~(29)~~ "Person" means an individual, partnership, firm,
214 corporation, association, or other entity.

215 (31)~~(30)~~ "Personal watercraft" means a vessel less than 16
216 feet in length which uses an inboard motor powering a water jet
217 pump~~,~~ as its primary source of motive power and which is
218 designed to be operated by a person sitting, standing, or
219 kneeling on the vessel, rather than in the conventional manner
220 of sitting or standing inside the vessel.

221 (32)~~(31)~~ "Portable toilet" means a device consisting of a
222 lid, seat, containment vessel, and support structure which ~~that~~
223 is specifically designed to receive, retain, and discharge human
224 waste and which ~~that~~ is capable of being removed from a vessel
225 by hand.

226 (33)~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~
227 will impede or disturb navigation or creates a safety hazard on
228 waterways of this state.

229 (34)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak"
230 means a manually propelled vessel that ~~which~~ is recognized by
231 national or international racing associations for use in
232 competitive racing and in which all occupants, with the

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233 exception of a coxswain, if one is provided, row, scull, or
234 paddle and that ~~which~~ is not designed to carry and does not
235 carry any equipment not solely for competitive racing.

236 (35)~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

237 (a) Manufactured and used primarily for noncommercial
238 purposes; or

239 (b) Leased, rented, or chartered to a person for his or her
240 ~~the person's~~ noncommercial use.

241 (36)~~(35)~~ "Registration" means a state operating license on
242 a vessel which is issued with an identifying number, an annual
243 certificate of registration, and a decal designating the year
244 for which a registration fee is paid.

245 (37)~~(36)~~ "Resident" means a citizen of the United States
246 who has established residence in this state and has continuously
247 resided in this state for 1 year and in one county for the 6
248 months immediately preceding the initiation of a vessel titling
249 or registration action.

250 (38)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source of
251 propulsion is the wind.

252 (39) "Sustained wind speed" means a wind speed determined
253 by averaging the observed wind speed rounded up to the nearest
254 mile per hour over a 2-minute period.

255 (40)~~(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented
256 vessel, including its machinery, rigging, and accessories, which
257 is in the physical possession of a ~~any~~ marina, garage, or repair
258 shop for repairs, improvements, or other work with the knowledge
259 of the vessel owner and for which the costs of such services
260 have been unpaid for more than ~~a period in excess of~~ 90 days
261 after ~~from~~ the date written notice of the completed work is

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262 given by the marina, garage, or repair shop to the vessel owner.

263 ~~(41)(39)~~ "Vessel" is synonymous with boat as referenced in
264 s. 1(b), Art. VII of the State Constitution and includes every
265 description of watercraft, barge, and airboat, other than a
266 seaplane on the water, used or capable of being used as a means
267 of transportation on water.

268 ~~(42)(40)~~ "Waters of this state" means any navigable waters
269 of the United States within the territorial limits of this
270 state, ~~and~~ the marginal sea adjacent to this state and the high
271 seas when navigated as a part of a journey or ride to or from
272 the shore of this state, and all the inland lakes, rivers, and
273 canals under the jurisdiction of this state.

274 Section 3. Section 327.375, Florida Statutes, is created to
275 read:

276 327.375 Commercial parasailing.-

277 (1) The operator of a vessel engaged in commercial
278 parasailing shall ensure that the provisions of this section and
279 s. 327.37 are met.

280 (2) The owner or operator of a vessel engaged in commercial
281 parasailing may not offer or provide for consideration any
282 parasailing activity unless the owner or operator first obtains
283 and maintains in full force and effect a liability insurance
284 policy from an insurance carrier licensed in this state or
285 approved by the Office of Insurance Regulation or an eligible
286 surplus lines insurer. Such policy must provide bodily injury
287 liability coverage in the amounts of at least \$1 million per
288 occurrence and \$2 million annual aggregate. Proof of insurance
289 must be available for inspection at the location where
290 commercial parasailing is offered or provided for consideration,

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291 and each customer who requests such proof shall be provided with
292 the insurance carrier's name and address and the insurance
293 policy number.

294 (3) The operator of a vessel engaged in commercial
295 parasailing must have a current and valid license issued by the
296 United States Coast Guard authorizing the operator to carry
297 passengers for hire. The license must be appropriate for the
298 number of passengers carried and the displacement of the vessel.
299 The license must be carried on the vessel and be available for
300 inspection while engaging in commercial parasailing activities.

301 (4) A vessel engaged in commercial parasailing must be
302 equipped with a functional VHF marine transceiver and a separate
303 electronic device capable of providing access to National
304 Weather Service forecasts and current weather conditions.

305 (5) (a) Commercial parasailing is prohibited if the current
306 observed wind conditions in the area of operation include a
307 sustained wind speed of more than 20 miles per hour; if wind
308 gusts are 15 miles per hour higher than the sustained wind
309 speed; if the wind speed during gusts exceeds 25 miles per hour;
310 if rain or heavy fog results in reduced visibility of less than
311 0.5 mile; or if a known lightning storm comes within 7 miles of
312 the parasailing area.

313 (b) The operator of the vessel engaged in commercial
314 parasailing shall use all available means to determine
315 prevailing and forecasted weather conditions and record this
316 information in a weather log each time passengers are to be
317 taken out on the water. The weather log must be available for
318 inspection at all times at the operator's place of business.

319 (6) A person or operator who violates this section commits

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320 a misdemeanor of the second degree, punishable as provided in s.
 321 775.082 or s. 775.083.

322 Section 4. Paragraph (d) of subsection (5) of section
 323 320.08, Florida Statutes, is amended to read:

324 320.08 License taxes.—Except as otherwise provided herein,
 325 there are hereby levied and imposed annual license taxes for the
 326 operation of motor vehicles, mopeds, motorized bicycles as
 327 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
 328 and mobile homes, as defined in s. 320.01, which shall be paid
 329 to and collected by the department or its agent upon the
 330 registration or renewal of registration of the following:

331 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
 332 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

333 (d) A wrecker, as defined in s. 320.01, which is used to
 334 tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned,
 335 stolen-recovered, or impounded motor vehicle as defined in s.
 336 320.01, or a replacement motor vehicle as defined in s. 320.01:
 337 \$41 flat, of which \$11 shall be deposited into the General
 338 Revenue Fund.

339 Section 5. Subsection (1) of section 327.391, Florida
 340 Statutes, is amended to read:

341 327.391 Airboats regulated.—

342 (1) The exhaust of every internal combustion engine used on
 343 any airboat operated on the waters of this state shall be
 344 provided with an automotive-style factory muffler, underwater
 345 exhaust, or other manufactured device capable of adequately
 346 muffling the sound of the exhaust of the engine as described in
 347 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
 348 the sole source of muffling is prohibited, except as provided in

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349 subsection (4). Any person who violates this subsection commits
350 a noncriminal infraction punishable as provided in s. 327.73(1).

351 Section 6. Subsection (4) of section 328.17, Florida
352 Statutes, is amended to read:

353 328.17 Nonjudicial sale of vessels.—

354 (4) A marina, as defined in s. 327.02~~(20)~~, shall have:

355 (a) A possessory lien upon any vessel for storage fees,
356 dockage fees, repairs, improvements, or other work-related
357 storage charges, and for expenses necessary for preservation of
358 the vessel or expenses reasonably incurred in the sale or other
359 disposition of the vessel. The possessory lien attaches ~~shall~~
360 ~~attach~~ as of the date the vessel is brought to the marina or as
361 of the date the vessel first occupies rental space at the marina
362 facility.

363 (b) A possessory lien upon any vessel in a wrecked, junked,
364 or substantially dismantled condition~~7~~ which has been left
365 abandoned at a marina~~7~~ for expenses reasonably incurred in the
366 removal and disposal of the vessel. The possessory lien attaches
367 ~~shall attach~~ as of the date the vessel arrives at the marina or
368 as of the date the vessel first occupies rental space at the
369 marina facility. If the funds recovered from the sale of ~~the~~
370 ~~vessel~~~~7~~ or ~~from~~ the scrap or salvage value of the vessel~~7~~ are
371 insufficient to cover the expenses reasonably incurred by the
372 marina in removing and disposing of the vessel, all costs in
373 excess of recovery shall be recoverable against the owner of the
374 vessel. For a vessel damaged as a result of a named storm, the
375 provisions of this paragraph shall be suspended for 60 days
376 after ~~following~~ the date the vessel is damaged in the named
377 storm. The operation of the provisions specified in this

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378 paragraph run concurrently with, and do not extend, the 60-day
379 notice periods provided in subsections (5) and (7).

380 Section 7. Subsection (2) of section 342.07, Florida
381 Statutes, is amended to read:

382 342.07 Recreational and commercial working waterfronts;
383 legislative findings; definitions.—

384 (2) As used in this section, the term “recreational and
385 commercial working waterfront” means a parcel or parcels of real
386 property which ~~that~~ provide access for water-dependent
387 commercial activities, including hotels and motels as defined in
388 s. 509.242(1), or provide access for the public to the navigable
389 waters of the state. Recreational and commercial working
390 waterfronts require direct access to or a location on, over, or
391 adjacent to a navigable body of water. The term includes water-
392 dependent facilities that are open to the public and offer
393 public access by vessels to the waters of the state or that are
394 support facilities for recreational, commercial, research, or
395 governmental vessels. These facilities include public lodging
396 establishments, docks, wharfs, lifts, wet and dry marinas, boat
397 ramps, boat hauling and repair facilities, commercial fishing
398 facilities, boat construction facilities, and other support
399 structures over the water. As used in this section, the term
400 “vessel” has the same meaning as in s. 327.02~~(39)~~. Seaports are
401 excluded from the definition.

402 Section 8. Paragraph (b) of subsection (1) of section
403 713.78, Florida Statutes, is amended to read:

404 713.78 Liens for recovering, towing, or storing vehicles
405 and vessels.—

406 (1) For the purposes of this section, the term:

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407 (b) "Vessel" means every description of watercraft, barge,
408 and airboat used or capable of being used as a means of
409 transportation on water, other than a seaplane or a "documented
410 vessel" as defined in s. 327.02~~(9)~~.

411 Section 9. Paragraph (b) of subsection (1) of section
412 715.07, Florida Statutes, is amended to read:

413 715.07 Vehicles or vessels parked on private property;
414 towing.-

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

416 (b) "Vessel" means every description of watercraft, barge,
417 and airboat used or capable of being used as a means of
418 transportation on water, other than a seaplane or a "documented
419 vessel" as defined in s. 327.02~~(9)~~.

420 Section 10. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic Parasailing

Bill Number 320
(if applicable)

Name Mayor Lamar Fisher

Amendment Barcode _____
(if applicable)

Job Title Mayor, City of Pompano Beach

Address 100 W Atlantic Blvd

Phone 954-786-4601

Street

Pompano Bch FL 33060

City

State

Zip

E-mail lamar.fisher@copbfl.com

Speaking: For Against Information

Representing City of Pompano Beach

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)

3/19/14
Meeting Date

Topic PARASAILING

Bill Number SB 320
(if applicable)

Name DAVID ERICKS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 205 S ADAMS ST
Street

Phone 870-2240880

TALAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing BROWARD COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 11, 2014

I respectfully request that **Senate Bill # 320**, relating to Commercial Parasailing, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Maria Sachs".

Senator Maria Sachs
Florida Senate, District 34

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 Community Affairs

BILL: CS/SB 786

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Discretionary Sales Surtaxes

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	White	Yeatman	CA	Fav/CS
3.			TR	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 786 allows a county to use the proceeds and interest from a duly adopted local government infrastructure surtax for operational and maintenance expenses related to infrastructure, provided such use is approved by a majority of the electors of the county voting in a referendum on the surtax. Infrastructure, under the bill, would include relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

This bill also authorizes a new discretionary sales surtax of up to one half of one percent for homeless services and facilities within the county through the adoption of an ordinance passed by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Local Discretionary Sales Surtaxes

In addition to the six percent state sales tax, the Florida Statutes authorize counties to charge discretionary sales surtaxes,¹ which must be specifically designated by statute.² Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes, which are the:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.³

Discretionary sales surtax applies to transactions when:

- The selling dealer delivers taxable goods or taxable service in or into a county with a surtax.
- The event for which an admission is charged is located in a county with a surtax. Tax is due at the rate in the county where the event takes place.
- The consumer of electric power or energy is located in a county with a surtax.
- The sale of prepaid calling arrangements occurs in a county with a surtax.
- The location or delivery of tangible personal property covered by a service warranty is within a surtax county. The person receiving consideration for the issuance of a service warranty from the agreement holder must collect surtax at the rate imposed by that county.
- The commercial real property that is leased or rented, or upon which a license for use is granted, is in a county with a surtax.
- The rental of living or sleeping accommodations (transient rentals) occurs in a county with a surtax.
- A registered dealer owing use tax on purchases or leases is in a county with a surtax.

Amount of Local Discretionary Sales Surtax, and Limitations

The amount of discretionary sales surtax depends on the county where the taxable goods or services are sold, or delivered. DOR lists the rates imposed on Form DR-15DSS.⁴ The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax.⁵ Charlotte and Hernando counties have local government sales surtaxes that are set to expire in December of 2014. Currently, the maximum surtax of 1.5 percent is imposed in nine counties.⁶

¹ The local discretionary sales surtax may also be known as a local option county sales tax. A surtax is an “additional tax imposed on something being taxed or on the primary tax itself.” BLACK’S LAW DICTIONARY 704 (3rd ed. 2006).

² Sections 212.054, 212.055, F.S.

³ Section 212.055(1)-(8), F.S.

⁴ New rates become effective January 1st each year. The form is updated yearly in November. See DOR, *Discretionary Sales Surtax Information for Calendar Year 2014* (Form DR-15DSS), available at http://dor.myflorida.com/dor/forms/current/dr15dss_1113.pdf (last visited Mar. 12, 2014).

⁵ Currently, twelve counties do not impose a discretionary surtax. *Id.*

⁶ *Id.* The following counties have a 1.5% surtax rate in 2014: Calhoun, Escambia, Gadsden, Jackson, Leon, Liberty, Madison, Monroe, and Walton.

Discretionary sales surtax applies to the first \$5,000 for transactions related to any item of tangible personal property.⁷ Tangible personal property is defined as “personal property that you can see, weigh, measure, or touch or is in any manner perceptible to the senses, including electric power or energy.”⁸ The \$5,000 cap does not apply to:

- Sales of admissions;
- Sales of warranties;
- Sales and uses of services;
- Charges for prepaid calling arrangements;
- Leases, rental, and licenses to use real property or transient accommodations;
- Leases or renting of parking or storage space for motor vehicles in parking lots or garages;
- Docking or storage space in boat docks and marinas; and
- Tie-down or storage space for aircraft.⁹

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax (surtax) is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.¹⁰ The sales tax rate may be 0.5 percent or 1.0 percent.¹¹ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.¹²

Proceeds and accrued interest may be expended:¹³

- By school districts to finance, plan, and construct infrastructure;¹⁴
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to commercial or residential property owners who make energy efficiency improvements, provided a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county or municipal solid waste landfills.

Proceeds and accrued interest may not be used for the operational expenses of infrastructure.¹⁵ The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds

⁷ Section 212.054(2)(b), F.S.

⁸ DOR, *Florida's Discretionary Sales Surtax*, available at <http://dor.myflorida.com/dor/forms/current/gt800019.pdf> (last visited Mar. 12, 2014).

⁹ Section 212.054(2)-(3), F.S.

¹⁰ Section 212.055(2)(a)1., F.S.

¹¹ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent.

¹² Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

¹³ Section 212.055(2)(d), F.S.

¹⁴ Infrastructure is defined in Section 212.055(2)(d)1.a-e, F.S.

¹⁵ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

because they are more in the nature of day-to-day operational expenses.¹⁶ However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving both the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.¹⁷

Seventeen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Fifteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla. During the 2013-14 fiscal year, these counties received combined county revenues of \$618,621,561. During the 2014-15 fiscal year, these counties are expected to receive combined county revenues of \$650,171,261.¹⁸

The Homeless Population in Florida

According to the *2013 Report* prepared by the Florida Council on Homelessness, homelessness is a significant and growing concern in this state. The report noted that:

- Florida has the third largest homeless population in the nation and 8.7 percent of the nation's homeless people live in this state.
- Since 2007, Florida has registered the largest increase of homeless people.
- Approximately 7,107 more residents were homeless in 2012 than in 2007, an increase of 14.8 percent in the state while the national average decreased by 5.7 percent.
- Families with children is the fastest growing demographic of the homeless population.
- In the 2011-2012 school year, the state's school districts identified 63,685 students as homeless children and youth, which represents a 12 percent increase from the previous school year.
- Of the children and youth identified as homeless, 6,798 or 11 percent were classified as "unaccompanied youth," or not in the physical custody of a parent or guardian.¹⁹

The Council on Homelessness and the State Office on Homelessness

The Council on Homelessness (council) and the State Office on Homelessness (SOH) were created in 2001 within the Department of Children and Families (DCF).²⁰ The council comprises

¹⁶ Op. Att'y Gen. Fla. 94-79 (1994).

¹⁷ Op. Att'y Gen. Fla. 2012-19 (2012).

¹⁸ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2014).

¹⁹ Florida Council on Homelessness, *Council on Homelessness: 2013 Report*, www.myflfamilies.com/service-programs/homelessness. (June 30, 2013). Some of the data in the report was drawn from the *2012 Annual Homeless Assessment Report, Volume I*, issued by the U.S. Department of Housing and Urban Development.

²⁰ Chapter 2001-98, Laws of Fla.

17 representatives of state agencies, counties, homeless advocacy organizations, and volunteers.²¹ The council is to develop policy and advise the SOH.²²

The SOH coordinates state agency responses to homelessness, serves as a single point of contact on homeless issues in the state, and administers state-funded grant programs that support the activities of the 27 local homeless coalitions.²³ The SOH administers all homelessness grants through lead agencies. The lead agency has the responsibility for continuum of care plans that help communities or regions envision, plan, and implement comprehensive and long-term solutions to the problem of homelessness.²⁴ Lead agencies are also authorized applicants for the Challenge Grant and the Homeless Housing Assistance Grant.

Emergency Financial Assistance Program

The Emergency Financial Assistance Program (EFA) is a grant program that provides support to families with at least one minor child, currently without shelter, or facing the loss of shelter because of the following:²⁵

- Nonpayment of rent or mortgage resulting in eviction or notice of eviction;
- Household disaster that renders the home uninhabitable; or
- Other emergency situations defined in rule.

Families may receive up to \$400 during one period of 30 consecutive days in any 12 consecutive months.²⁶ DCF serves approximately 2,000 families a year under EFA.

Homeless Housing Assistance Grants

This state grant program provides homeless housing assistance grants up to \$750,000 annually to lead agencies to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.²⁷ Administrative costs are capped at five percent of the funds awarded.²⁸

Challenge Grant

This program provides grants of up to \$500,000 to lead agencies who have developed and implemented a local homeless assistance continuum of care plan. The plan must detail how outreach, emergency shelter, support services, and permanent shelter will be provided in the area.²⁹ The state currently has 28 local homeless continuum of care planning areas that receive state grants. Currently, state law does not provide for a limit on the use of grant funds for administrative costs incurred by lead agencies.

²¹ Section 420.622, F.S.

²² *Id.*

²³ *Id.*

²⁴ Section 420.642, F.S.

²⁵ Section 414.16, F.S.

²⁶ Rule 65A-33.011, F.A.C.

²⁷ Section 420.622, F.S.

²⁸ *Id.*

²⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 212.055(2)(d), F.S., to allow for the use of the proceeds or interest accrued from the levy of a local government infrastructure surtax for the maintenance expenses of infrastructure, if the local government ordinance authorizes such use and it is approved by a referendum. The bill also expands the definition of infrastructure to include fixed capital outlays for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

The bill creates s. 212.055(9), F.S., to add a ninth discretionary sales surtax, known as the Homeless Services and Facilities Surtax, authorizing a county to levy up to 0.5 percent for homeless services and facilities within the county. The bill:

- Defines the terms “homeless facilities” and “homeless services;”
- Requires the surtax be adopted by county ordinance and approved by a majority of electors of the county voting in a referendum held for such purpose;
- Requires that the referendum be placed on the ballot of a regularly scheduled election;
- Requires the governing body of the county to place on the ballot a statement that includes a brief description of the purposes to be funded by the surtax;
- Requires the statement placed on the ballot to conform to requirements set forth in Section 101.161, F.S.; and
- Requires the ordinance to include a plan for the provision of services to qualified homeless residents.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a county ordinance is approved to levy the Homeless Services and Facilities Surtax, sales tax would increase by up to 0.5 percent.

C. Government Sector Impact:

The bill would allow local governments that levy the Local Government Infrastructure Surtax to expend proceeds and interest on the maintenance expenses of infrastructure, for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

The bill has not yet been reviewed by the Revenue Estimating Conference to determine the revenue impact on state and local government, if any.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 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 Community Affairs on March 19, 2014:

- Allows the use of proceeds and interest from the surtax for maintenance expenses of infrastructure, if approved by referendum; and
- Expands the definition of infrastructure to include fixed capital outlays for relocation of public facilities, permit compliance, and costs incurred for studies or planning activities.

B. Amendments:

None.

By Senator Latvala

20-00826-14

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1 A bill to be entitled
2 An act relating to discretionary sales surtaxes;
3 amending s. 212.055, F.S.; revising the uses of the
4 proceeds of the local government infrastructure surtax
5 to include the maintenance of transportation
6 infrastructure; authorizing a county to levy a
7 homeless services and facilities surtax; defining
8 "homeless services" and "homeless facilities";
9 requiring an ordinance, referendum, and voter
10 approval; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraphs (d) and (h) of subsection (2) of
15 section 212.055, Florida Statutes, are amended, and subsection
16 (9) is added to that section, to read:

17 212.055 Discretionary sales surtaxes; legislative intent;
18 authorization and use of proceeds.—It is the legislative intent
19 that any authorization for imposition of a discretionary sales
20 surtax shall be published in the Florida Statutes as a
21 subsection of this section, irrespective of the duration of the
22 levy. Each enactment shall specify the types of counties
23 authorized to levy; the rate or rates which may be imposed; the
24 maximum length of time the surtax may be imposed, if any; the
25 procedure which must be followed to secure voter approval, if
26 required; the purpose for which the proceeds may be expended;
27 and such other requirements as the Legislature may provide.
28 Taxable transactions and administrative procedures shall be as
29 provided in s. 212.054.

20-00826-14

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30 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

31 (d) The proceeds of the surtax authorized by this
32 subsection and any accrued interest shall be expended by the
33 school district, within the county and municipalities within the
34 county, or, in the case of a negotiated joint county agreement,
35 within another county, to finance, plan, and construct
36 infrastructure; to acquire land for public recreation,
37 conservation, or protection of natural resources; to provide
38 loans, grants, or rebates to residential or commercial property
39 owners who make energy efficiency improvements to their
40 residential or commercial property, if a local government
41 ordinance authorizing such use is approved by referendum; or to
42 finance the closure of county-owned or municipally owned solid
43 waste landfills that have been closed or are required to be
44 closed by order of the Department of Environmental Protection.
45 Any use of the proceeds or interest for purposes of landfill
46 closure before July 1, 1993, is ratified. The proceeds and any
47 interest may not be used for the operational expenses of
48 infrastructure, except that a county may use the proceeds or
49 interest for the maintenance of transportation infrastructure if
50 the local government ordinance authorizing such use is approved
51 by referendum as provided in this subsection, and a county that
52 has a population of fewer than 75,000 and that is required to
53 close a landfill may use the proceeds or interest for long-term
54 maintenance costs associated with landfill closure. Counties, as
55 defined in s. 125.011, and charter counties may, in addition,
56 use the proceeds or interest to retire or service indebtedness
57 incurred for bonds issued before July 1, 1987, for
58 infrastructure purposes, and for bonds subsequently issued to

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59 refund such bonds. Any use of the proceeds or interest for
60 purposes of retiring or servicing indebtedness incurred for
61 refunding bonds before July 1, 1999, is ratified.

62 1. As used in ~~For the purposes of~~ this paragraph, the term
63 "infrastructure" means:

64 a. A ~~Any~~ fixed capital expenditure or fixed capital outlay
65 associated with the construction, reconstruction, or improvement
66 of public facilities that have a life expectancy of 5 or more
67 years and ~~any~~ related land acquisition, land improvement,
68 design, and engineering costs.

69 b. A fire department vehicle, an emergency medical services
70 ~~service~~ vehicle, a sheriff's office vehicle, a police department
71 vehicle, or ~~any~~ other vehicle, and the equipment necessary to
72 outfit the vehicle for its official use or equipment that has a
73 life expectancy of at least 5 years.

74 c. An ~~Any~~ expenditure for the construction, lease, or
75 maintenance of, or provision of utilities or security for,
76 facilities, as defined in s. 29.008.

77 d. A ~~Any~~ fixed capital expenditure or fixed capital outlay
78 associated with the improvement of private facilities that have
79 a life expectancy of 5 or more years and that the owner agrees
80 to make available for use on a temporary basis as needed by a
81 local government as a public emergency shelter or a staging area
82 for emergency response equipment during an emergency officially
83 declared by the state or by the local government under s.
84 252.38. Such improvements are limited to those necessary to
85 comply with current standards for public emergency evacuation
86 shelters. The owner must enter into a written contract with the
87 local government providing the improvement funding to make the

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88 private facility available to the public for purposes of
89 emergency shelter at no cost to the local government for a
90 minimum of 10 years after completion of the improvement, which
91 includes a ~~with the~~ provision that the obligation will transfer
92 to a ~~any~~ subsequent owner until the end of the minimum period.

93 e. A ~~Any~~ land acquisition expenditure for a residential
94 housing project in which at least 30 percent of the units are
95 affordable to individuals or families whose total annual
96 household income does not exceed 120 percent of the area median
97 income adjusted for household size, if the land is owned by a
98 local government or by a special district that enters into a
99 written agreement with the local government to provide such
100 housing. The local government or special district may enter into
101 a ground lease with a public or private person or entity for
102 nominal or other consideration for the construction of the
103 residential housing project on land acquired pursuant to this
104 sub-subparagraph.

105 2. As used in ~~For the purposes of~~ this paragraph, the term
106 "energy efficiency improvement" means an ~~any energy conservation~~
107 ~~and efficiency~~ improvement that reduces energy consumption
108 through conservation or a more efficient use of electricity,
109 natural gas, propane, or other forms of energy on the property,
110 including, but not limited to, air sealing; installation of
111 insulation; installation of energy-efficient heating, cooling,
112 or ventilation systems; installation of solar panels; building
113 modifications to increase the use of daylight or shade;
114 replacement of windows; installation of energy controls or
115 energy recovery systems; installation of electric vehicle
116 charging equipment; installation of systems for natural gas fuel

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117 as defined in s. 206.9951; and installation of efficient
118 lighting equipment.

119 3. Notwithstanding any other provision of this subsection,
120 a local government infrastructure surtax imposed or extended
121 after July 1, 1998, may allocate up to 15 percent of the surtax
122 proceeds for deposit into a trust fund within the county's
123 accounts created for the purpose of funding economic development
124 projects having a general public purpose of improving local
125 economies, including the funding of operational costs and
126 incentives related to economic development. The ballot statement
127 must indicate the intention to make an allocation under the
128 authority of this subparagraph.

129 (h) Notwithstanding any other provision of this section, a
130 county may ~~shall~~ not levy local option sales surtaxes authorized
131 under ~~in~~ this subsection and subsections (3), (4), ~~and~~ (5), and
132 (9) in excess of a combined rate of 1 percent.

133 (9) HOMELESS SERVICES AND FACILITIES SURTAX.—The governing
134 authority of a county may, by ordinance, levy a discretionary
135 sales surtax of up to 0.5 percent for homeless services and
136 facilities within the county as provided in this subsection.

137 (a) As used in this subsection, the term:

138 1. "Homeless facilities" includes, but is not limited to,
139 the purchase and construction or renovation of sites to serve as
140 central points of access, homeless housing, emergency housing,
141 and supportive housing.

142 2. "Homeless services" includes, but is not limited to,
143 outreach, intake, assessment, case management, homeless
144 prevention, emergency and supportive housing, temporary medical
145 respite, housing vouchers, transportation assistance, job

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2014786__

146 readiness, job coaching, job development and placement, and
147 homeless data management.

148 (b) The ordinance adopted by the governing authority
149 providing for the imposition of the surtax must also include a
150 plan for providing services to qualified homeless residents.

151 (c) Upon the adoption of the ordinance, the levy of the
152 surtax shall be placed on the ballot of a regularly scheduled
153 election by the governing authority enacting the ordinance. A
154 statement that includes a brief description of the purposes to
155 be funded by the surtax and conforms to the requirements of s.
156 101.161 must be included in the ballot. The ordinance shall take
157 effect if approved by a majority of the electors of the county
158 voting in a referendum held for such purpose.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19

Meeting Date

Topic DISCRETIONARY SALES SURTAX Bill Number 786
(if applicable)

Name TODD BON LARSON Amendment Barcode _____
(if applicable)

Job Title ~~301 N. OLIVE AVE~~ LEGISLATIVE DIRECTOR

Address 301 N. OLIVE AVE Phone (561) 355-3451
Street

WEST PALM BEACH FL 33401 E-mail tlarson@phcc.gov.ny
City State Zip

Speaking: For Against Information

Representing PALM BEACH COUNTY

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/2014

Meeting Date

Topic Local Infrastructure Surtax

Bill Number 786
(if applicable)

Name Amber Hughes

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address PO Box 1757

Phone 850-701-3621

Street

Tallahassee, FL 32301

City

State

Zip

E-mail ahughes@flcities.com

Speaking: For Against Information

Representing FL League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

March 4, 2014

The Honorable Wilton Simpson
Senate Community Affairs Committee
404 S. Monroe St., 315 Knott Building
Tallahassee, FL 32399-1100

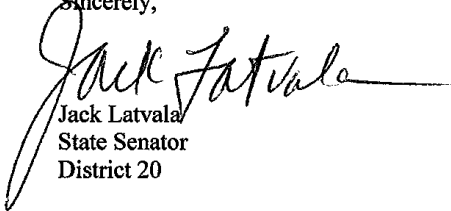
Dear Chairman Simpson:

I respectfully request that Senate Bill 786/Discretionary Sales Surtaxes be placed on the agenda of the Senate Committee on Community Affairs at your earliest convenience. It was successfully referred from the Senate Committee on Children, Families, and Elder Affairs on March 3rd.

The purpose of this bill is to add a ninth type of local discretionary sales surtax to fund homeless services, providing for local residents to vote on use and amount needed by their county. While the need for assistance for the homeless has risen, the ability to fund and access resources to serve these most vulnerable Floridians has steadily declined.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,



Jack Latvala
State Senator
District 20

JL:tc

CC: Tom Yeatman, Staff Director; Ann Whittaker, Administrative Assistant

REPLY TO:

28133 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

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 Community Affairs

BILL: CS/SB 1442

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: Publicly Funded Retirement Programs

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1442 allows a municipality providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement to receive premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

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 Acts¹ 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 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.

¹ See ch. 175 and 185, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

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 (DMS) 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, but day-to-day operational control rests 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: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”); employee contributions; other revenue sources; and 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 (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁶ For fiscal year 2014-15, 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

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

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.

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).

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 would allow a municipality providing fire protection services to a MSTU through an interlocal agreement to receive 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, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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).

B. Private Sector Impact:

None.

C. Government Sector Impact:

Provisions of this bill will have an indeterminable negative impact on the General Revenue Fund, because taxes imposed pursuant to ch. 175, F.S., are credited against premium taxes paid to the state. The provisions of this bill have not been reviewed by the Revenue Estimating Conference.

Municipalities providing fire service to MSTUs will receive an indeterminate amount of additional revenue to fund firefighter pension plans.

The Department of Revenue notes that it may need to update forms and databases.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 Changes:**

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

CS by Community Affairs on March 19, 2014:

Makes technical 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.

¹³ Dep't of Revenue, Legislative Bill Analysis SB 1442 (Mar. 12, 2014).

By Senator Bradley

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1 A bill to be entitled
2 An act relating to publicly funded retirement
3 programs; amending s. 175.041, F.S.; revising
4 applicability of the Marvin B. Clayton Firefighters
5 Pension Trust Fund Act; providing that any municipal
6 services taxing unit that provides fire protection
7 services to another municipality under an interlocal
8 agreement is eligible to receive property insurance
9 premium taxes; amending s. 175.101, F.S.; authorizing
10 a municipal services taxing unit that enters into an
11 interlocal agreement for fire protection services with
12 another municipality to impose an excise tax on
13 property insurance premiums; amending s. 175.111,
14 F.S.; requiring municipal services taxing units to
15 provide the Division of Retirement of the Department
16 of Management Services with a certified copy of the
17 ordinance assessing and imposing certain taxes;
18 amending ss. 175.122 and 175.351, F.S.; revising
19 provisions relating to the limitation of disbursement
20 to conform to changes made by the act; amending s.
21 175.411, F.S.; authorizing a municipal services taxing
22 unit, under certain conditions, to revoke its
23 participation and cease to receive property insurance
24 premium taxes; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (3) of section 175.041, Florida
29 Statutes, is amended to read:

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30 175.041 Firefighters' Pension Trust Fund created;
31 applicability of provisions.—For any municipality, special fire
32 control district, chapter plan, local law municipality, local
33 law special fire control district, or local law plan under this
34 chapter:

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

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

51 (b) With respect to the distribution of premium taxes, a
52 single consolidated government consisting of a former county and
53 one or more municipalities, consolidated pursuant to s. 3 or s.
54 6(e), Art. VIII of the State Constitution, is also eligible to
55 participate under this chapter. The consolidated government
56 shall notify the division when it has entered into an interlocal
57 agreement to provide fire services to a municipality within its
58 boundaries. The municipality may enact an ordinance levying the

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59 tax as provided in s. 175.101. Upon being provided copies of the
60 interlocal agreement and the municipal ordinance levying the
61 tax, the division may distribute any premium taxes reported for
62 the municipality to the consolidated government as long as the
63 interlocal agreement is in effect.

64 (c) Any municipality that has entered into an interlocal
65 agreement to provide fire protection services to any other
66 incorporated municipality or a municipal services taxing unit in
67 an unincorporated area, in its entirety, for a period of 12
68 months or more may be eligible to receive the premium taxes
69 reported for such other municipality or municipal services
70 taxing unit. In order to be eligible for such premium taxes, the
71 municipality providing the fire services must notify the
72 division that it has entered into an interlocal agreement with
73 another municipality or a county on behalf of a municipal
74 services taxing unit. The municipality receiving the fire
75 services may enact an ordinance levying the tax as provided in
76 s. 175.101. Upon being provided copies of the interlocal
77 agreement and the municipal ordinance levying the tax, the
78 division may distribute any premium taxes reported for the
79 municipality or municipal services taxing unit receiving the
80 fire services to the participating municipality providing the
81 fire services as long as the interlocal agreement is in effect.

82 Section 2. Subsections (1) and (3) of section 175.101,
83 Florida Statutes, are amended to read:

84 175.101 State excise tax on property insurance premiums
85 authorized; procedure.—For any municipality, special fire
86 control district, chapter plan, local law municipality, local
87 law special fire control district, or local law plan under this

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88 chapter:

89 (1) Each municipality, ~~or~~ special fire control district, or
90 municipal services taxing unit in this state described and
91 classified in s. 175.041, having a lawfully established
92 firefighters' pension trust fund or municipal fund or special
93 fire control district fund, by whatever name known, providing
94 pension benefits to firefighters as provided under this chapter,
95 may assess and impose on every insurance company, corporation,
96 or other insurer now engaged in or carrying on, or who shall
97 hereinafter engage in or carry on, the business of property
98 insurance as shown by the records of the Office of Insurance
99 Regulation of the Financial Services Commission, an excise tax
100 in addition to any lawful license or excise tax now levied by
101 each of the municipalities, ~~or~~ special fire control districts,
102 or municipal services taxing units, respectively, amounting to
103 1.85 percent of the gross amount of receipts of premiums from
104 policyholders on all premiums collected on property insurance
105 policies covering property within the corporate limits of such
106 municipalities or within the legally defined boundaries of
107 special fire control districts or municipal services taxing
108 units, respectively. Whenever the boundaries of a special fire
109 control district or municipal services taxing unit that has
110 lawfully established a firefighters' pension trust fund
111 encompass a portion of the corporate territory of a municipality
112 that has also lawfully established a firefighters' pension trust
113 fund, that portion of the tax receipts attributable to insurance
114 policies covering property situated both within the municipality
115 and the special fire control district or municipal services
116 taxing unit shall be given to the fire service provider. For the

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

129 (3) This excise tax shall be payable annually on March 1 of
130 each year after the passage of an ordinance, in the case of a
131 municipality, or resolution, in the case of a special fire
132 control district or municipal services taxing unit, assessing
133 and imposing the tax authorized by this section. Installments of
134 taxes shall be paid according to the provision of s.
135 624.5092(2)(a), (b), and (c).

136
137 This section also applies to any municipality consisting of a
138 single consolidated government which is made up of a former
139 county and one or more municipalities, consolidated pursuant to
140 the authority in s. 3 or s. 6(e), Art. VIII of the State
141 Constitution, and to property insurance policies covering
142 property within the boundaries of the consolidated government,
143 regardless of whether the properties are located within one or
144 more separately incorporated areas within the consolidated
145 government, provided the properties are being provided fire

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146 protection services by the consolidated government. This section
147 also applies to any municipality, as provided in s.
148 175.041(3)(c), which has entered into an interlocal agreement to
149 receive fire protection services from another municipality
150 participating under this chapter. The excise tax may be levied
151 on all premiums collected on property insurance policies
152 covering property located within the corporate limits of the
153 municipality receiving the fire protection services, but will be
154 available for distribution to the municipality providing the
155 fire protection services.

156 Section 3. Section 175.111, Florida Statutes, is amended to
157 read:

158 175.111 Certified copy of ordinance or resolution filed;
159 insurance companies' annual report of premiums; duplicate files;
160 book of accounts.—For any municipality, municipal services
161 taxing unit, special fire control district, chapter plan, local
162 law municipality, local law special fire control district, or
163 local law plan under this chapter, whenever any municipality
164 passes an ordinance or whenever any special fire control
165 district passes a resolution establishing a chapter plan or
166 local law plan assessing and imposing the taxes authorized in s.
167 175.101, a certified copy of such ordinance or resolution shall
168 be deposited with the division. Thereafter every insurance
169 company, association, corporation, or other insurer carrying on
170 the business of property insurance on real or personal property,
171 on or before the succeeding March 1 after date of the passage of
172 the ordinance or resolution, shall report fully in writing and
173 under oath to the division and the Department of Revenue a just
174 and true account of all premiums by such insurer received for

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175 property insurance policies covering or insuring any real or
176 personal property located within the corporate limits of each
177 such municipality, municipal services taxing unit, or special
178 fire control district during the period of time elapsing between
179 the date of the passage of the ordinance or resolution and the
180 end of the calendar year. The report shall include the code
181 designation as prescribed by the division for each piece of
182 insured property, real or personal, located within the corporate
183 limits of each municipality and municipal services taxing unit,
184 and within the legally defined boundaries of each special fire
185 control district. The aforesaid insurer shall annually
186 thereafter, on March 1, file with the Department of Revenue a
187 similar report covering the preceding year's premium receipts,
188 and every such insurer at the same time of making such reports
189 shall pay to the Department of Revenue the amount of the tax
190 hereinbefore mentioned. Every insurer engaged in carrying on
191 such insurance business in the state shall keep accurate books
192 of accounts of all such business done by it within the corporate
193 limits of each such municipality and municipal services taxing
194 unit and within the legally defined boundaries of each such
195 special fire control district, and in such manner as to be able
196 to comply with the provisions of this chapter. Based on the
197 insurers' reports of premium receipts, the division shall
198 prepare a consolidated premium report and shall furnish to any
199 municipality, municipal services taxing unit, or special fire
200 control district requesting the same a copy of the relevant
201 section of that report.

202 Section 4. Section 175.122, Florida Statutes, is amended to
203 read:

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204 175.122 Limitation of disbursement.—For any municipality,
205 municipal services taxing unit, special fire control district,
206 chapter plan, local law municipality, local law special fire
207 control district, or local law plan under this chapter, any
208 municipality, municipal services taxing unit, or special fire
209 control district participating in the firefighters' pension
210 trust fund pursuant to the provisions of this chapter, whether
211 under a chapter plan or local law plan, shall be limited to
212 receiving any moneys from such fund in excess of that produced
213 by one-half of the excise tax, as provided for in s. 175.101;
214 however, any such municipality, municipal services taxing unit,
215 or special fire control district receiving less than 6 percent
216 of its fire department payroll from such fund shall be entitled
217 to receive from such fund the amount determined under s.
218 175.121, in excess of one-half of the excise tax, not to exceed
219 6 percent of its fire department payroll. Payroll amounts of
220 members included in the Florida Retirement System shall not be
221 included.

222 Section 5. Subsection (1) of section 175.351, Florida
223 Statutes, is amended to read:

224 175.351 Municipalities, municipal services taxing units,
225 and special fire control districts having their own pension
226 plans for firefighters.—For any municipality, municipal services
227 taxing unit, special fire control district, local law
228 municipality, local law special fire control district, or local
229 law plan under this chapter, in order for municipalities,
230 municipal services taxing units, and special fire control
231 districts with their own pension plans for firefighters, or for
232 firefighters and police officers if included, to participate in

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233 the distribution of the tax fund established pursuant to s.
234 175.101, local law plans must meet the minimum benefits and
235 minimum standards set forth in this chapter.

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

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

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

252 Section 6. Section 175.411, Florida Statutes, is amended to
253 read:

254 175.411 Optional participation.—A municipality, municipal
255 services taxing unit, or special fire control district may
256 revoke its participation under this chapter by rescinding the
257 legislative act, ordinance, or resolution which assesses and
258 imposes the taxes authorized in s. 175.101, and by furnishing a
259 certified copy of such legislative act, ordinance, or resolution
260 to the division. Thereafter, the municipality, municipal
261 services taxing unit, or special fire control district shall be

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262 prohibited from participating under this chapter, and shall not
263 be eligible for future premium tax moneys. Premium tax moneys
264 previously received shall continue to be used for the sole and
265 exclusive benefit of firefighters, or firefighters and police
266 officers where included, and no amendment, legislative act,
267 ordinance, or resolution shall be adopted which shall have the
268 effect of reducing the then-vested accrued benefits of the
269 firefighters, retirees, or their beneficiaries. The
270 municipality, municipal services taxing unit, or special fire
271 control district shall continue to furnish an annual report to
272 the division as provided in s. 175.261. If the municipality,
273 municipal services taxing unit, or special fire control district
274 subsequently terminates the defined benefit plan, they shall do
275 so in compliance with the provisions of s. 175.361.

276 Section 7. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Publically Funded Retirement Programs

Bill Number 1442

(if applicable)

Name Amy Datz

Amendment Barcode

(if applicable)

Job Title Retired State employee

Address 1130 Crestview Ave

Phone 850-322-7599

Street

Tallahassee FL 32307

City

State

Zip

E-mail Amalie Datz @

mac.com

Speaking:

For

Against

Information

Representing

AFSCME Retiree

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)

3/19/14

Meeting Date

Topic Publicly Funded Retirement

Bill Number 1442
(if applicable)

Name Yelene Goin Plans

Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe St Ste 203

Phone 850-284-2460

Street

Tall FL 32301

City

State

Zip

E-mail Ygoin@bplegal.com

Speaking: For Against Information

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 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 4, 2014

I respectfully request that **Senate Bill # 1442**, relating to Publicly Funded Retirement Programs, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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 Community Affairs

BILL: CS/SB 1106

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Building Construction

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.			HP	
3.			RI	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1106 contains several provisions related to building construction, codes, and permitting. The bill does the following:

- Requires application to the Department of Health (DOH) for an operating permit for a public swimming pool before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit;
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules;
- Revises the allocation of funds from building permit surcharges to include the Future Builders of America Program;
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations;
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program;
- Provides a criteria-based definition for “building energy-efficiency rating system”;
- Provides homeowners doing renovations with an additional fire safety alarm option; and
- Exempts tents from the Florida Fire Prevention Code.

The bill allocates to the Future Builders of America Program \$250,000 from funds that are remitted to the Professional Regulation Trust Fund each year, beginning with FY 2014-2015. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee.

The bill takes effect July 1, 2014.

II. Present Situation:

Florida Building Commission

The Florida Building Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 26-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.¹

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., by which notices are provided, including:

certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2., [relating to publication of notices and the physical posting of notices, respectively]

The other options for serving notices in s. 162.12(1), F.S., are by:

- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving at the violator's residence with any person residing there above the age of 15; or
- For commercial premises, leaving the notice with the manager or other person in charge.²

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.³

¹ Sections 553.74, 553.76 and 553.77, F.S.

² See ss. 162.12(1)(b)-(d), F.S.

³ See s.162.12(2), F.S.

Pool Construction and Operation in Florida

The DOH estimates that there are approximately 37,000 public pools in Florida.⁴ A “public swimming pool” or “public pool” is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.⁵

A “public bathing place” is defined as:

A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.⁶

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.⁷ In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the DOH.⁸

⁴ Florida Dep’t of Health, *2013 Legislative Analysis for SB 156* (Jan. 7, 2013).

⁵ Section 514.011(2), F.S.

⁶ Section 514.011(4), F.S.

⁷ Chapter 2012-184, Laws of Fla.

⁸ Section 514.031(1), F.S.

If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the DOH will issue a permit. However, if the DOH determines that the pool is not in compliance with state laws and departmental rules, the DOH will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.⁹ The operating permit must be renewed annually and posted in a conspicuous place.¹⁰

Currently, the order of the permitting process that is required to build a public swimming pool or public bathing place is unclear. Local governments have reported entire public swimming pools being completed before owners discovered issues or problems after applying for the operating permit.

Manufactured Buildings and Building Modules per the Florida Building Code

Section 553.72, F.S., provides that the Florida Building Code (code) is “a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state,” and its enforcement “will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.” The Florida Building Commission adopts requirements, within the Florida Building Code, for construction or modification of manufactured buildings and building modules, to address:¹¹

- Submittal to and approval by the DBPR of manufacturers’ drawings and specifications, including any amendments.
- Submittal to and approval by the DBPR of manufacturers’ internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

“Manufactured building” or “modular building” means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.¹²

“Module” means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.¹³

⁹ *Id.*

¹⁰ Section 514.031(4), F.S.

¹¹ Section 553.37(1), F.S.

¹² Section 553.36(13), F.S.

¹³ Section 553.36(15), F.S.

Florida Building Code Surcharge

The Florida Building Commission is authorized to adopt, modify, update, interpret, and maintain the Florida Building Code and provide that code enforcement will be performed by authorized state and local government enforcement agencies.¹⁴ In order for DBPR to administer and carry out the code provisions, there is a surcharge that is assessed at 1.5 percent of the permit fees associated with enforcement of the code.¹⁵

The amount of revenue generated by the surcharge has ranged from approximately \$1,000,000 to \$5,000,000 per year over the past 10 years.¹⁶ The funds that are collected from the surcharge and remitted to DBPR are deposited in the Professional Regulation Trust Fund and then allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.¹⁷ Funds allocated to the Florida Building Code Compliance and Mitigation Program are \$925,000 each fiscal year.¹⁸

Florida Building Code Interpretation

Section 553.775, F.S., authorizes the Florida Building Code to be interpreted by building officials, local enforcement agencies, and the Florida Building Commission (commission) and provides specific procedures to be used when interpreting the code.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements described in part I of ch. 553, F.S.

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

Florida Building Code Compliance and Mitigation Program

The DBPR administers the Florida Building Code Compliance and Mitigation Program, which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.¹⁹ The program is geared toward persons *licensed* in the design and

¹⁴ Section 553.72(3), F.S.

¹⁵ The minimum amount collected on any permit issued is \$2. Section 553.721, F.S.

¹⁶ DBPR, *Legislative Analysis of HB 593* (Feb. 20, 2014).

¹⁷ The Florida Building Code Compliance and Mitigation Program is established in Section 553.841, F.S.

¹⁸ Funds used by DBPR as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act.

¹⁹ Section 553.841(2), F.S.

construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.²⁰

Building Energy-Efficiency Rating System

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act,²¹ in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.²² The current statutory definition of such a rating system specifically relies upon identification by “the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Center.”²³ Information about a building’s energy-efficiency must be provided to a prospective purchaser of real property, if available. Prior to contracting for construction, renovation, or acquisition of a public building, the building must be rated pursuant to the system provided for in s. 553.995, F.S. Public bodies proposing to contract must consider energy-efficiency ratings when comparing contract alternatives.²⁴

III. Effect of Proposed Changes:

Code Violation Notices (Section 1)

The bill amends s. 162.12, F.S., which relates to noticing alleged violators of local codes and ordinances to qualify that when a notice is sent to the tax collector’s office by certified mail, the local government has the option of requiring inclusion of a return receipt request.

Public Swimming Pools and Public Bathing Places (Sections 2, 3, and 7)

The bill requires those desiring to construct, develop, or modify a public swimming pool to apply to the DOH for an operating permit before applying for a building permit. It prohibits the local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit. The bill provides that a certificate of occupancy may not be issued until the operating permit is issued. The bill also adds to the list of information that is to accompany the operating permit application, by requiring proof of final inspection, a description of the structure, its appurtenances, and its operation.

Construction or Modification of Manufactured Buildings and Building Modules (Section 4)

The bill details the “minimum inspection criteria” under s. 553.37(1), F.S., by requiring the approved inspection agency to do the following:

- Inspect the first building built, or the first unit assembled with components, and all its subsystems, after certification from the manufacturer.

²⁰ Section 553.841(3), F.S.

²¹ Chapter 93-249, s.12, Laws of Fla.

²² Section 553.991, F.S.

²³ Section 553.993(3), F.S.

²⁴ Section 553.997(1), F.S.

- Continue observation of the manufacturing process until the agency determines that the manufacturer's quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements.
- With respect to manufactured buildings, inspect each module produced at least once during the manufacturing process, and inspect the entire production line during each plant inspection, to ensure that at least one electrical, plumbing, structural, mechanical, or thermal subsystem is exposed during inspection of at least 75 percent of the modules inspected. The requirement appears to have been derived from the 2007 edition of the Florida Building Code, which was amended in the 2010 edition to require that 75 percent of the subsystems were inspected per plan. The proposed legislation would only require inspection of one subsystem in 75 percent of the buildings.
- With respect to components, inspect at least 75 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

Florida Building Code Surcharge (Section 5)

From the building permit fees remitted to DBPR, the bill allocates to the Future Builders of America Program \$250,000 per fiscal year, beginning in FY 2014-2015.

The Future Builders of America Program is a nonprofit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.²⁵ As of November 2013, there were 11 chapters in Florida, located in Charlotte, DeSoto, Manatee, Okaloosa, Polk, Sarasota, Volusia, and Walton Counties, and the Treasure Coast.²⁶

Florida Building Code Interpretation (Section 6)

The bill authorizes building officials, local enforcement agencies, and the commission to interpret the accessibility code and removes language restricting declaratory statements to Florida-specific requirements of the accessibility code.

Florida Building Code Compliance and Mitigation Program (Section 8)

The bill revises education and training requirements of the Florida Building Code Compliance and Mitigation program. In addition to maintaining a thorough knowledge of the code, participants in the design and construction industry should have a thorough knowledge of:

- Code compliance and enforcement;
- Duties related to consumers;
- Project completion; and
- Compliance of design and construction to protect from consumer harm, and storm damage.

²⁵ Future Builders of America, <http://www.futurebuildersofamerica.org/> (Last visited Mar. 14, 2014).

²⁶ *Id.*

The bill expands the scope of the program to provide education and outreach concerning compliance with the Florida Fire Prevention Code, construction plan and permitting requirements, and construction liens. The bill further expands the applicability of the program to include people employed in the design and construction industries.

Smoke Alarms (Section 9)

The bill would allow homeowners doing a renovation to install a smoke alarm with a nonremovable, nonreplaceable, ten-year battery, instead of hardwiring a smoke alarm into the electrical system. Currently, s. 553.88, F.S., provides for the adoption of electrical and alarm standards, which includes the adoption of the National Fire Alarm Code.²⁷

Building Energy-Efficiency Rating System (Section 10)

The bill provides a definition for “Building energy-efficiency rating system” with specific criteria, including:

- The ability to provide reliable and scientifically-based analysis of a building’s energy consumption or energy features;
- The ability to compare similar building types in similar climate zones;
- Use of standard calculations, formulas, and scoring methods;
- National applicability;
- Clearly defined and researched baselines or benchmarks;
- Ratings that are performed by qualified professionals;
- A labeling and recognition program with specific criteria or levels; and
- At least one level of oversight performed by a group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.

Tents (Section 11)

The bill exempts tents smaller than 30 feet by 30 feet from the Florida Fire Prevention Code.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ NFPA No. 72.

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

None.

B. Private Sector Impact:

The bill provides a clarification regarding the order in which permits must be obtained for public swimming pools and public bathing places. This may result in cost savings due to issues and problems being identified prior to construction.

C. Government Sector Impact:

The bill allocates \$250,000 to the Future Builders of America Program from funds that are remitted to the Professional Regulation Trust Fund. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee.

VI. Technical Deficiencies:

Section 2 of the bill requires application to DOH for an operating permit for a public swimming pool before applying for a building permit. Section 3 provides criteria for the application of the operating permit. One of the criteria is proof of final inspection. It is unclear how an applicant is to provide proof of final inspection before applying for a building permit.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 162.12, 514.03, 514.031, 553.37, 553.721, 553.775, 553.79, and 553.841.

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 Community Affairs Committee on March 19, 2014:

- Adds proof of inspection to the list of items required as part of an application for a public swimming pool operating permit;
- Clarifies that final inspection of a pool can occur prior to obtaining an operating permit, but issuance of a certificate of completion may not;
- Clarifies that inspection is required of each subsystem of the first manufactured building assembled;
- Increases the percent of manufactured building components that must be inspected from 50 percent to 75 percent;

- Allows homeowners doing a renovation to install a smoke alarm with a ten year battery, instead of hardwiring a smoke alarm into the electrical system;
- Defines “building energy-efficiency rating system”; and
- Recognizes that a tent need not adhere to the Florida Fire Prevention Code.

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 Simpson

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1 A bill to be entitled
2 An act relating to building construction; amending s.
3 162.12, F.S.; providing an additional method for local
4 governments to provide notices to alleged code
5 enforcement violators; amending s. 514.03, F.S.;
6 requiring application for an operating permit before
7 filing an application for a building permit for a
8 public swimming pool or bathing place; amending s.
9 514.031, F.S.; providing an additional requirement for
10 obtaining a public swimming pool operating permit;
11 amending s. 553.37, F.S.; specifying inspection
12 criteria for construction or modification of
13 manufactured buildings or modules; amending s.
14 553.721, F.S.; revising the allocation of funds from
15 the building permit surcharge; amending s. 553.775,
16 F.S.; authorizing building officials, local
17 enforcement agencies, and the Florida Building
18 Commission to interpret the Florida Accessibility Code
19 for Building Construction; specifying procedures for
20 such interpretations; deleting provisions relating to
21 declaratory statements and interpretations of the
22 Florida Accessibility Code for Building Construction,
23 to conform; amending s. 553.79, F.S.; prohibiting a
24 local enforcing agency from issuing a building permit
25 for a public swimming pool or bathing place without
26 proof of application for an operating permit;
27 requiring issuance of an operating permit before final
28 inspection is completed; amending s. 553.841, F.S.;
29 revising education and training requirements of the

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30 Florida Building Code Compliance and Mitigation
31 Program; providing an effective date.
32

33 Be It Enacted by the Legislature of the State of Florida:
34

35 Section 1. Subsection (1) of section 162.12, Florida
36 Statutes, is amended to read:

37 162.12 Notices.—

38 (1) All notices required by this part must be provided to
39 the alleged violator by:

40 (a) First-class mail or, at the option of the local
41 government, certified mail, return receipt requested, to the
42 address listed in the tax collector's office for tax notices or
43 to the address listed in the county property appraiser's
44 database. The local government may also provide an additional
45 notice to any other address it may find for the property owner.
46 For property owned by a corporation, notices may be provided by
47 certified mail to the registered agent of the corporation. If
48 any notice sent by certified mail is not signed as received
49 within 30 days after the postmarked date of mailing, notice may
50 be provided by posting as described in subparagraphs (2) (b)1.
51 and 2.;

52 (b) Hand delivery by the sheriff or other law enforcement
53 officer, code inspector, or other person designated by the local
54 governing body;

55 (c) Leaving the notice at the violator's usual place of
56 residence with any person residing therein who is above 15 years
57 of age and informing such person of the contents of the notice;
58 or

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59 (d) In the case of commercial premises, leaving the notice
60 with the manager or other person in charge.

61 Section 2. Section 514.03, Florida Statutes, is amended to
62 read:

63 514.03 Approval necessary to construct, develop, or modify
64 public swimming pools or public bathing places.—

65 (1) A person or public body desiring to construct, develop,
66 or modify a public swimming pool or public bathing place must
67 apply to the department for an operating permit before filing an
68 application for a building permit under s. 553.79.

69 (2) Local governments or local enforcement districts may
70 determine compliance with the general construction standards of
71 the Florida Building Code, pursuant to s. 553.80. Local
72 governments or local enforcement districts may conduct plan
73 reviews and inspections of public swimming pools and public
74 bathing places for this purpose.

75 Section 3. Paragraph (a) of subsection (1) of section
76 514.031, Florida Statutes, is amended to read:

77 514.031 Permit necessary to operate public swimming pool.—

78 (1) It is unlawful for any person or public body to operate
79 or continue to operate any public swimming pool without a valid
80 permit from the department, such permit to be obtained in the
81 following manner:

82 (a) Any person or public body desiring to operate any
83 public swimming pool shall file an application for a permit with
84 the department, on application forms provided by the department,
85 and shall accompany such application with:

86 1. A description of the structure, its appurtenances, and
87 its operation.

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88 ~~2.1.~~ A description of the source or sources of water
89 supply, and the amount and quality of water available and
90 intended to be used.

91 ~~3.2.~~ The method and manner of water purification,
92 treatment, disinfection, and heating.

93 ~~4.3.~~ The safety equipment and standards to be used.

94 ~~5.4.~~ Any other pertinent information deemed necessary by
95 the department.

96 Section 4. Paragraph (c) of subsection (1) of section
97 553.37, Florida Statutes, is amended to read:

98 553.37 Rules; inspections; and insignia.—

99 (1) The Florida Building Commission shall adopt within the
100 Florida Building Code requirements for construction or
101 modification of manufactured buildings and building modules, to
102 address:

103 (c) ~~Minimum~~ Inspection criteria, which shall require the
104 approved inspection agency to:

105 1. Inspect the first building built, or the first unit
106 assembled with components, after certification of the
107 manufacturer.

108 2. Continue observation of the manufacturing process until
109 the agency determines that the manufacturer's quality control
110 program and the plans approved by the agency will result in a
111 building and components that meet or exceed the applicable
112 Florida Building Code requirements.

113 3. With respect to manufactured buildings, inspect each
114 module produced at least once during the manufacturing process,
115 and inspect the entire production line during each plant
116 inspection, to ensure that at least one electrical, plumbing,

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117 structural, mechanical, or thermal subsystem is exposed during
118 inspection of at least 75 percent of the modules inspected.

119 4. With respect to components, inspect at least 50 percent
120 of the manufactured building components or 20 percent of storage
121 sheds that are not designed for human habitation and that have a
122 floor area of 720 square feet or less.

123 Section 5. Section 553.721, Florida Statutes, is amended to
124 read:

125 553.721 Surcharge.—In order for the Department of Business
126 and Professional Regulation to administer and carry out the
127 purposes of this part and related activities, there is created a
128 surcharge, to be assessed at the rate of 1.5 percent of the
129 permit fees associated with enforcement of the Florida Building
130 Code as defined by the uniform account criteria and specifically
131 the uniform account code for building permits adopted for local
132 government financial reporting pursuant to s. 218.32. The
133 minimum amount collected on any permit issued shall be \$2. The
134 unit of government responsible for collecting a permit fee
135 pursuant to s. 125.56(4) or s. 166.201 shall collect the
136 surcharge and electronically remit the funds collected to the
137 department on a quarterly calendar basis for the preceding
138 quarter and continuing each third month thereafter. The unit of
139 government shall retain 10 percent of the surcharge collected to
140 fund the participation of building departments in the national
141 and state building code adoption processes and to provide
142 education related to enforcement of the Florida Building Code.
143 All funds remitted to the department pursuant to this section
144 shall be deposited in the Professional Regulation Trust Fund.
145 Funds collected from the surcharge shall be allocated to fund

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146 the Florida Building Commission, ~~and~~ the Florida Building Code
147 Compliance and Mitigation Program under s. 553.841, and the
148 Future Builders of America Program. Beginning in the 2013-2014
149 ~~fiscal year,~~ Funds allocated to the Florida Building Code
150 Compliance and Mitigation Program shall be \$925,000 each fiscal
151 year. Beginning in the 2014-2015 fiscal year, funds allocated to
152 the Future Builders of America Program shall be \$250,000 each
153 fiscal year. The funds collected from the surcharge may not be
154 used to fund research on techniques for mitigation of radon in
155 existing buildings. Funds used by the department as well as
156 funds to be transferred to the Department of Health shall be as
157 prescribed in the annual General Appropriations Act. The
158 department shall adopt rules governing the collection and
159 remittance of surcharges pursuant to chapter 120.

160 Section 6. Section 553.775, Florida Statutes, is amended to
161 read:

162 553.775 Interpretations.—

163 (1) It is the intent of the Legislature that the Florida
164 Building Code and the Florida Accessibility Code for Building
165 Construction be interpreted by building officials, local
166 enforcement agencies, and the commission in a manner that
167 protects the public safety, health, and welfare at the most
168 reasonable cost to the consumer by ensuring uniform
169 interpretations throughout the state and by providing processes
170 for resolving disputes regarding interpretations of the Florida
171 Building Code and the Florida Accessibility Code for Building
172 Construction which are just and expeditious.

173 (2) Local enforcement agencies, local building officials,
174 state agencies, and the commission shall interpret provisions of

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175 the Florida Building Code and the Florida Accessibility Code for
176 Building Construction in a manner that is consistent with
177 declaratory statements and interpretations entered by the
178 commission, except that conflicts between the Florida Fire
179 Prevention Code and the Florida Building Code shall be resolved
180 in accordance with s. 553.73(11)(c) and (d).

181 (3) The following procedures may be invoked regarding
182 interpretations of the Florida Building Code or the Florida
183 Accessibility Code for Building Construction:

184 (a) Upon written application by any substantially affected
185 person or state agency or by a local enforcement agency, the
186 commission shall issue declaratory statements pursuant to s.
187 120.565 relating to the enforcement or administration by local
188 governments of the Florida Building Code or the Florida
189 Accessibility Code for Building Construction.

190 (b) When requested in writing by any substantially affected
191 person or state agency or by a local enforcement agency, the
192 commission shall issue a declaratory statement pursuant to s.
193 120.565 relating to this part and ss. 515.25, 515.27, 515.29,
194 and 515.37. Actions of the commission are subject to judicial
195 review under s. 120.68.

196 (c) The commission shall review decisions of local building
197 officials and local enforcement agencies regarding
198 interpretations of the Florida Building Code or the Florida
199 Accessibility Code for Building Construction after the local
200 board of appeals has considered the decision, if such board
201 exists, and if such appeals process is concluded within 25
202 business days.

203 1. The commission shall coordinate with the Building

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204 Officials Association of Florida, Inc., to designate panels
205 composed of five members to hear requests to review decisions of
206 local building officials. The members must be licensed as
207 building code administrators under part XII of chapter 468 and
208 must have experience interpreting and enforcing provisions of
209 the Florida Building Code and the Florida Accessibility Code for
210 Building Construction.

211 2. Requests to review a decision of a local building
212 official interpreting provisions of the Florida Building Code or
213 the Florida Accessibility Code for Building Construction may be
214 initiated by any substantially affected person, including an
215 owner or builder subject to a decision of a local building
216 official or an association of owners or builders having members
217 who are subject to a decision of a local building official. In
218 order to initiate review, the substantially affected person must
219 file a petition with the commission. The commission shall adopt
220 a form for the petition, which shall be published on the
221 Building Code Information System. The form shall, at a minimum,
222 require the following:

223 a. The name and address of the county or municipality in
224 which provisions of the Florida Building Code or the Florida
225 Accessibility Code for Building Construction are being
226 interpreted.

227 b. The name and address of the local building official who
228 has made the interpretation being appealed.

229 c. The name, address, and telephone number of the
230 petitioner; the name, address, and telephone number of the
231 petitioner's representative, if any; and an explanation of how
232 the petitioner's substantial interests are being affected by the

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233 local interpretation of the Florida Building Code or the Florida
234 Accessibility Code for Building Construction.

235 d. A statement of the provisions of the Florida Building
236 Code or the Florida Accessibility Code for Building Construction
237 which are being interpreted by the local building official.

238 e. A statement of the interpretation given to provisions of
239 the Florida Building Code or the Florida Accessibility Code for
240 Building Construction by the local building official and the
241 manner in which the interpretation was rendered.

242 f. A statement of the interpretation that the petitioner
243 contends should be given to the provisions of the Florida
244 Building Code or the Florida Accessibility Code for Building
245 Construction and a statement supporting the petitioner's
246 interpretation.

247 g. Space for the local building official to respond in
248 writing. The space shall, at a minimum, require the local
249 building official to respond by providing a statement admitting
250 or denying the statements contained in the petition and a
251 statement of the interpretation of the provisions of the Florida
252 Building Code or the Florida Accessibility Code for Building
253 Construction which the local jurisdiction or the local building
254 official contends is correct, including the basis for the
255 interpretation.

256 3. The petitioner shall submit the petition to the local
257 building official, who shall place the date of receipt on the
258 petition. The local building official shall respond to the
259 petition in accordance with the form and shall return the
260 petition along with his or her response to the petitioner within
261 5 days after receipt, exclusive of Saturdays, Sundays, and legal

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262 holidays. The petitioner may file the petition with the
263 commission at any time after the local building official
264 provides a response. If no response is provided by the local
265 building official, the petitioner may file the petition with the
266 commission 10 days after submission of the petition to the local
267 building official and shall note that the local building
268 official did not respond.

269 4. Upon receipt of a petition that meets the requirements
270 of subparagraph 2., the commission shall immediately provide
271 copies of the petition to a panel, and the commission shall
272 publish the petition, including any response submitted by the
273 local building official, on the Building Code Information System
274 in a manner that allows interested persons to address the issues
275 by posting comments.

276 5. The panel shall conduct proceedings as necessary to
277 resolve the issues; shall give due regard to the petitions, the
278 response, and to comments posed on the Building Code Information
279 System; and shall issue an interpretation regarding the
280 provisions of the Florida Building Code or the Florida
281 Accessibility Code for Building Construction within 21 days
282 after the filing of the petition. The panel shall render a
283 determination based upon the Florida Building Code or the
284 Florida Accessibility Code for Building Construction or, if the
285 code is ambiguous, the intent of the code. The panel's
286 interpretation shall be provided to the commission, which shall
287 publish the interpretation on the Building Code Information
288 System and in the Florida Administrative Register. The
289 interpretation shall be considered an interpretation entered by
290 the commission, and shall be binding upon the parties and upon

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291 all jurisdictions subject to the Florida Building Code or the
292 Florida Accessibility Code for Building Construction, unless it
293 is superseded by a declaratory statement issued by the Florida
294 Building Commission or by a final order entered after an appeal
295 proceeding conducted in accordance with subparagraph 7.

296 6. It is the intent of the Legislature that review
297 proceedings be completed within 21 days after the date that a
298 petition seeking review is filed with the commission, and the
299 time periods set forth in this paragraph may be waived only upon
300 consent of all parties.

301 7. Any substantially affected person may appeal an
302 interpretation rendered by a hearing officer panel by filing a
303 petition with the commission. Such appeals shall be initiated in
304 accordance with chapter 120 and the uniform rules of procedure
305 and must be filed within 30 days after publication of the
306 interpretation on the Building Code Information System or in the
307 Florida Administrative Register. Hearings shall be conducted
308 pursuant to chapter 120 and the uniform rules of procedure.
309 Decisions of the commission are subject to judicial review
310 pursuant to s. 120.68. The final order of the commission is
311 binding upon the parties and upon all jurisdictions subject to
312 the Florida Building Code or the Florida Accessibility Code for
313 Building Construction.

314 8. The burden of proof in any proceeding initiated in
315 accordance with subparagraph 7. is on the party who initiated
316 the appeal.

317 9. In any review proceeding initiated in accordance with
318 this paragraph, including any proceeding initiated in accordance
319 with subparagraph 7., the fact that an owner or builder has

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320 proceeded with construction may not be grounds for determining
321 an issue to be moot if the issue is one that is likely to arise
322 in the future.

323
324 This paragraph provides the exclusive remedy for addressing
325 requests to review local interpretations of the Florida Building
326 Code or the Florida Accessibility Code for Building Construction
327 and appeals from review proceedings.

328 (d) Upon written application by any substantially affected
329 person, contractor, or designer, or a group representing a
330 substantially affected person, contractor, or designer, the
331 commission shall issue or cause to be issued a formal
332 interpretation of the Florida Building Code or the Florida
333 Accessibility Code for Building Construction as prescribed by
334 paragraph (c).

335 (e) Local decisions declaring structures to be unsafe and
336 subject to repair or demolition are not subject to review under
337 this subsection and may not be appealed to the commission if the
338 local governing body finds that there is an immediate danger to
339 the health and safety of the public.

340 (f) Upon written application by any substantially affected
341 person, the commission shall issue a declaratory statement
342 pursuant to s. 120.565 relating to an agency's interpretation
343 and enforcement of the specific provisions of the Florida
344 Building Code or the Florida Accessibility Code for Building
345 Construction which the agency is authorized to enforce. This
346 subsection does not provide any powers, other than advisory, to
347 the commission with respect to any decision of the State Fire
348 Marshal made pursuant to chapter 633.

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349 (g) The commission may designate a commission member who
350 has demonstrated expertise in interpreting building plans to
351 attend each meeting of the advisory council created in s.
352 553.512. The commission member may vary from meeting to meeting,
353 shall serve on the council in a nonvoting capacity, and shall
354 receive per diem and expenses as provided in s. 553.74(3).

355 (h) The commission shall by rule establish an informal
356 process of rendering nonbinding interpretations of the Florida
357 Building Code and the Florida Accessibility Code for Building
358 Construction. The commission is specifically authorized to refer
359 interpretive issues to organizations that represent those
360 engaged in the construction industry. The commission shall
361 immediately implement the process before completing formal
362 rulemaking. It is the intent of the Legislature that the
363 commission create a process to refer questions to a small,
364 rotating group of individuals licensed under part XII of chapter
365 468, to which a party may pose questions regarding the
366 interpretation of code provisions. It is the intent of the
367 Legislature that the process provide for the expeditious
368 resolution of the issues presented and publication of the
369 resulting interpretation on the Building Code Information
370 System. Such interpretations shall be advisory only and
371 nonbinding on the parties and the commission.

372 (4) In order to administer this section, the commission may
373 adopt by rule and impose a fee for filing requests for
374 declaratory statements and binding and nonbinding
375 interpretations to recoup the cost of the proceedings which may
376 not exceed \$125 for each request for a nonbinding interpretation
377 and \$250 for each request for a binding review or

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20141106__

378 interpretation. For proceedings conducted by or in coordination
379 with a third party, the rule may provide that payment be made
380 directly to the third party, who shall remit to the department
381 that portion of the fee necessary to cover the costs of the
382 department.

383 ~~(5) The commission may render declaratory statements in~~
384 ~~accordance with s. 120.565 relating to the provisions of the~~
385 ~~Florida Accessibility Code for Building Construction not~~
386 ~~attributable to the Americans with Disabilities Act~~
387 ~~Accessibility Guidelines. Notwithstanding the other provisions~~
388 ~~of this section, the Florida Accessibility Code for Building~~
389 ~~Construction and chapter 11 of the Florida Building Code may not~~
390 ~~be interpreted by, and are not subject to review under, any of~~
391 ~~the procedures specified in this section. This subsection has no~~
392 ~~effect upon the commission's authority to waive the Florida~~
393 ~~Accessibility Code for Building Construction as provided by s.~~
394 ~~553.512.~~

395 Section 7. Present subsections (11) through (18) of section
396 553.79, Florida Statutes, are renumbered as subsections (12)
397 through (19), respectively, and a new subsection (11) is added
398 to that section, to read:

399 553.79 Permits; applications; issuance; inspections.-

400 (11) The local enforcing agency may not issue a building
401 permit to construct, develop, or modify a public swimming pool
402 or public bathing place without proof of application for an
403 operating permit under s. 514.031. Final inspection may not be
404 completed until such operating permit is issued.

405 Section 8. Subsections (1) and (2) of section 553.841,
406 Florida Statutes, are amended to read:

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407 553.841 Building code compliance and mitigation program.—

408 (1) The Legislature finds that knowledge and understanding
409 by persons licensed or employed in the design and construction
410 industries of the importance and need for complying with the
411 Florida Building Code and related laws is vital to the public
412 health, safety, and welfare of this state, especially for
413 protecting consumers and mitigating damage caused by hurricanes
414 to residents and visitors to the state. The Legislature further
415 finds that the Florida Building Code can be effective only if
416 all participants in the design and construction industries
417 maintain a thorough knowledge of the code, code compliance and
418 enforcement, duties related to consumers, and changes that
419 ~~additions thereto which~~ improve construction standards, project
420 completion, and compliance of design and construction to protect
421 against consumer harm, storm damage, and other damage.

422 Consequently, the Legislature finds that there is a need for a
423 program to provide ongoing education and outreach activities
424 concerning compliance with the Florida Building Code, the
425 Florida Fire Prevention Code, construction plan and permitting
426 requirements, construction liens, and hurricane mitigation.

427 (2) The Department of Business and Professional Regulation
428 shall administer a program, designated as the Florida Building
429 Code Compliance and Mitigation Program, to develop, coordinate,
430 and maintain education and outreach to persons required to
431 comply with the Florida Building Code and related provisions as
432 specified in subsection (1) and ensure consistent education,
433 training, and communication of the code's requirements,
434 including, but not limited to, methods for design and
435 construction compliance and mitigation of storm-related damage.

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436 The program shall also operate a clearinghouse through which
437 design, construction, and building code enforcement licensees,
438 suppliers, and consumers in this state may find others in order
439 to exchange information relating to mitigation and facilitate
440 repairs in the aftermath of a natural disaster.

441 Section 9. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic Building Construction

Bill Number 5B 1106
(if applicable)

Name Bruce Kerchner

Amendment Barcode _____
(if applicable)

Job Title _____

Address 231 W. Bay Ave
Street

Phone 407-830-1882

Longwood FL 32750
City State Zip

E-mail RBKerchner@att.net

Speaking: For Against Information

Representing United Pool & Spa Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic BUILDING CONSTRUCTION

Bill Number SB 1106
(if applicable)

Name CAROLYN DAVIS

Amendment Barcode _____
(if applicable)

Job Title Retired R.N.

Address 643 POINSETTIA DR

Phone 727-475-8512

Street

LARGO

City

FL

State

33770

Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14
Meeting Date

Topic Building Construction

Bill Number SB 1106
(if applicable)

Name Raymond Davis

Amendment Barcode _____
(if applicable)

Job Title Retired

Address 643 Poinsettia Dr.

Phone _____

LARGO FL 33770
City State Zip

E-mail _____

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Building Construction

Bill Number SB 1106
(if applicable)

Name Val Smith

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9822 Lema ct
Street

Phone 727-375 5046

NPR FL, 34655
City State Zip

E-mail @ jay_val@msw.com

Speaking: For Against Information

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Building Construction

Bill Number SB1106
(if applicable)

Name Jason Smith

Amendment Barcode _____
(if applicable)

Job Title Cable Splicer

Address 9822 Lema Ct

Phone 727 457 7876

Street

NPR FL 34655

City

State

Zip

E-mail Goodtohome727@gmail.com

Speaking: For Against Information

Representing International Brotherhood of Electrical Workers, local 824

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/19/2014
Meeting Date

Topic Building Construction

Bill Number SB 1106
(if applicable)

Name William Perry

Amendment Barcode _____
(if applicable)

Job Title Communications

Address 3405 Ice Smith Rd.

Phone (813) 986-9121

Plant City FL 33565
City State Zip

E-mail perryman86@yahoo.com

Speaking: For Against Information

Representing IBEW 824

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic COORS + TRAININGS

Bill Number SB-1106
(if applicable)

Name J. B. CLARK

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 2041 CYNTHIA DRIVE
Street

Phone 850-556-8143

TALL HILL FL 32303
City State Zip

E-mail _____

Speaking: For Against Information

Representing FL ASSOCIATION OF APPRENTICESHIP ADMINISTRATORS

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic Building Construction

Bill Number 1706
(if applicable)

Name Amy Dutz

Amendment Barcode _____
(if applicable)

Job Title Retired State employee

Address 1130 Crestview Ave

Phone 850 322-7599

Tallahassee Fl. 32303
Street City State Zip

E-mail AmalieDutz@mac.com

Speaking: For Against Information

Representing AFSCME Retiree

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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THE FLORIDA SENATE
APPEARANCE RECORD

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3-19-14

Meeting Date

Topic

Construction

Bill Number

SB 1106

(if applicable)

Name

KARI HEBRANK

Amendment Barcode

(if applicable)

Job Title

Address

113 EAST COLLEGE

Phone

566-9824

Street

TALLAHASSEE

State

FL

Zip

32301

E-mail

Speaking:

For

Against

Information

Representing

FLORIDA HOME BUILDERS ASSOC., ASHRAE

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/19/14

Meeting Date

Topic _____

Bill Number SB 1106
(if applicable)

Name Jennifer Hatfield

Amendment Barcode _____
(if applicable)

Job Title _____

Address 34 SE 7th Ave #9
Street

Phone 941-345-3263

Delray Beach FL 33483
City State Zip

E-mail jen@jhatfieldandassociates.com

Speaking: For Against Information

Representing FL Swimming Pool Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14
Meeting Date

Topic Building Construction Bill Number 1106
(if applicable)

Name Gene Sanders Amendment Barcode _____
(if applicable)

Job Title Battalion Chief Tallahassee Fire Dept.

Address 327 N. Adams Street Phone _____
Street

Tallahassee FL 32301 E-mail eugene.sanders@talgov.com
City State Zip

Speaking: For Against Information

Representing Florida Fire Chief Association / Florida Fire Marshals & Inspectors Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14

Meeting Date

Topic FUNDS ALLOCATED TO FUTURE BUILDERS OF AMERICA Bill Number 1106
(if applicable)

Name John C. PARKER Amendment Barcode _____
(if applicable)

Job Title PRESIDENT, FLORIDA BUILDING TRADES

Address 102 W. MONRE ST Phone 904-613-1623

TALLAHASSEE FL 32301
City State Zip

E-mail FLORIDABUILDINGTRADES@hotmail.com

Speaking: For Against Information

Representing FLORIDA'S CONSTRUCTION TRADES PERSONS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-19-14
Meeting Date

Topic Building Construction

Bill Number 1106
(if applicable)

Name Stephen Shiver

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S Monroe St
Street

Phone 222 8900

Tallahassee State Zip

E-mail _____

Speaking: For Against Information

Representing Resnet

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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CourtSmart Tag Report

Room: SB 301

Case:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 3/19/2014 11:01:19 AM

Ends: 3/19/2014 12:27:03 PM

Length: 01:25:45

11:01:37 AM Call to order
11:02:42 AM Tab 6 SB 612 Senator Hays
11:03:00 AM Amendment 1 barcode 384250
11:04:00 AM Senator Smith
11:05:51 AM Speaker J.B. Clark representing Florida Building Council
11:07:24 AM Speaker Casey Cook representing Florida League of Cities
11:07:59 AM Senator Smith
11:08:37 AM Speaker Richard Watson representing Associated Builders and Contractors of Florida
11:09:10 AM Speaker Jess McCarty representing Miami-Dade County
11:09:48 AM Senator Smith
11:10:59 AM Senator Hays
11:12:38 AM Roll call on SB 612
11:12:56 AM Bill passes
11:13:05 AM Tab 1 SB 1634 Senator Detert
11:15:28 AM Senator Soto
11:17:23 AM Senator Thompson
11:18:48 AM Roll call on SB 1634
11:19:04 AM Bill passes
11:19:12 AM Tab 7 SB 320 Senator Sachs
11:22:21 AM Speaker Lomar Fisher representing City of Pompano Beach
11:23:13 AM Senator Smith
11:23:57 AM Senator Hukill
11:24:19 AM Roll call on SB 320
11:24:36 AM Bill passes
11:24:43 AM Tab 4 SB 340 Senator Flores
11:29:33 AM Senator Latvala
11:35:19 AM Senator Thrasher
11:37:12 AM Senator Smith
11:38:57 AM Senator Thompson
11:40:18 AM Senator Soto
11:41:19 AM Amendment 1 barcode 571126
11:41:49 AM Amendment to the amendment barcode 722784
11:42:13 AM Senator Latvala
11:42:30 AM Senator Thompson
11:45:35 AM Speaker Beth Nunnally representing Sunshine Health Plan
11:48:54 AM Speaker Audrey Brown representing Florida Association of Health Plans
11:53:25 AM Speaker Michael Garner representing Amerigroup Florida
11:59:06 AM Roll call on SB 340
11:59:20 AM Bill passes
11:59:49 AM Tab 5 SB 1102 Senator Altman's legislative aide Rick Kendust
12:00:37 PM Senator Soto
12:01:25 PM Senator Hukill
12:02:12 PM Speaker Kurt Spitzer representing Florida Stormwater Association
12:03:03 PM Senator Soto
12:03:27 PM Roll call on SB 1102
12:03:47 PM Bill passes
12:04:19 PM Tab 2 SB 1318 Senator Ever's legislative aide Dave Murzin
12:04:48 PM Amendment 1 barcode 255068
12:06:09 PM Senator Soto
12:07:14 PM Roll call on SB 1318
12:07:30 PM Bill passes
12:07:37 PM Tab 10 SB 1106 Senator Simpson

12:08:02 PM Amendment 1 barcode 456008
12:09:54 PM Senator Latvala
12:11:23 PM Speaker J.B. Clark representing Florida Association of Apprenticeship Administrators
12:15:52 PM Speaker Kari Hebrank representing Florida Home Builders Association
12:18:43 PM Roll call on SB 1106
12:18:53 PM Bill passes
12:19:04 PM Tab 8 SB 786 Senator Latvala
12:20:08 PM Amendment 1 barcode 465432
12:21:17 PM Roll call on SB 786
12:21:37 PM Bill passes
12:21:42 PM Tab 9 SB 1442 Senator Bradley
12:22:50 PM Amendment 1 barcode 853420
12:23:23 PM Roll call on SB 1442
12:23:43 PM Bill passes
12:23:49 PM Tab 3 SB 582 Senator Clemens
12:25:58 PM Speaker Mark Fontaine representing Florida Alcohol and Drug Abuse Association
12:26:42 PM Roll call on SB 582
12:26:53 PM Bill passes
12:26:56 PM Adjournment