Tab 1	**SB 196** by **Rodriguez**; (Similar to CS/H 00137) Florida Housing Finance Corporation

Tab 2	**SB 224** by **Gruters (CO-INTRODUCERS) Bradley, Farmer, Berman, Stewart, Rouson, Boyd, Hooper**; (Compare to H 00105) Regulation of Smoking in Public Places

Tab 3	**SB 228** by **Rodriguez (CO-INTRODUCERS) Burgess, Hutson, Gruters, Hooper**; (Similar to H 00101) Resiliency Energy Environment Florida Programs

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Tab 4	**SB 352** by **Hooper**; (Similar to CS/CS/H 00263) Construction Liens

Tab 5	**SB 406** by **Berman**; (Identical to H 00451) Secured Transactions

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bradley, Chair
Senator Garcia, Vice Chair

MEETING DATE: Wednesday, November 3, 2021
TIME: 8:30—11:00 a.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Farmer, Hooper, Hutson, and Polsky

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 196** Rodriguez (Similar H 137)	Florida Housing Finance Corporation; Designating the corporation, rather than the State Board of Administration, as the state fiscal agency to make determinations in connection with specified bonds; authorizing the corporation's board of directors, rather than the State Board of Administration, to delegate to its executive director the authority and power to perform that function; requiring the executive director to annually report specified information to the board of directors, rather than the State Board of Administration, etc. CA 11/03/2021 Favorable ATD AP	Favorable Yeas 8 Nays 0
2	**SB 224** Gruters (Compare H 105)	Regulation of Smoking in Public Places; Authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances; prohibiting smoking within the boundaries of a state park, etc. CA 11/03/2021 Favorable EN RC	Favorable Yeas 8 Nays 0
3	**SB 228** Rodriguez (Similar H 101)	Resiliency Energy Environment Florida Programs; Providing that a property owner may apply to a Resiliency Energy Environment Florida (REEF) program for funding to finance a qualifying improvement and may enter into an assessment financing agreement with a local government; authorizing local governments to enter into agreements with program administrators to administer REEF programs; specifying underwriting, financing estimate, disclosure, and confirmation requirements for program administrators relating to residential real property, etc. CA 11/03/2021 Favorable FT AP	Favorable Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 352** Hooper (Similar H 263)	Construction Liens; Revising the threshold for determining whether certain direct contracts to repair or replace an existing heating or air-conditioning system are exempt from specified notice of commencement and applicability of lien requirements for authorities issuing building permits, etc. CA 11/03/2021 Favorable RI RC	Favorable Yeas 8 Nays 0
5	**SB 406** Berman (Identical H 451)	Secured Transactions; Providing that a description of certain accounts and entitlements by a certain type of collateral is insufficient for the purpose of security agreements; providing retroactive application, etc. CA 11/03/2021 Favorable FT AP	Favorable Yeas 8 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 196
INTRODUCER:	Senator Rodriguez
SUBJECT:	Florida Housing Finance Corporation
DATE:	November 1, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			ATD	
3.			AP	

I. Summary:

SB 196 designates the Florida Housing Finance Corporation (Florida Housing) as the state fiscal agency authorized to make constitutional determinations of fiscal sufficiency in connection with their issuance of bonds. Currently, such determinations must be made by the State Board of Administration (SBA). To complement this change, the bill also removes a reference to SBA rules in the statute governing Florida Housing's Guarantee Program.

The bill takes effect July 1, 2022.

II. Present Situation:

The Florida Housing Finance Corporation (Florida Housing) is a public corporation created by the Legislature to assist in providing a range of affordable housing opportunities for Florida residents. Florida Housing administers federal and state resources to make loans, guarantees of loans, and to issue bonds to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.[1]

Florida Housing Bond Issuance

Florida Housing facilitates the issuance of bonds by serving in a conduit capacity. Each bond indenture is for a single purpose entity and the bonds are secured solely by the revenues, assets

[1] See *Overview of Florida Housing Finance Corporation*, Florida Housing Finance Corporation, available at https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf, (last visited October 20, 2021).

and guarantees associated with each bond.[2] The bonds are not an obligation of the state as they are not secured by the full faith and credit of the state.[3]

Section 420.509, F.S., designates the State Board of Administration (SBA) as the state fiscal agency to make the determinations required by s. 16, Art. VII, of the State Constitution, in connection with the issuance of Florida Housing bonds. The required fiscal determination is that in no state fiscal year will the debt service requirements of the bonds proposed to be issued, and all other bonds secured by the same pledged revenues, exceed the pledged revenues available for such debt service requirements. This section also authorizes Florida Housing to bear interest on the bonds that are issued. However, the rate or rates may not exceed the interest rate limitation set forth in s. 215.84(3), F.S.,[4] unless authorized by the SBA.[5]

Before a bond is issued, Florida Housing's Board of Directors must approve the requirements for a bond financed development. Upon the Board's approval, a fiscal sufficiency report is prepared by a third party and submitted to the SBA for approval. The Governor and the Florida Cabinet, functioning as the SBA, must place the report on the next scheduled Cabinet meeting's agenda, and only upon approval by the SBA can the bond transaction proceed to closing. This mechanism can produce significant delays in bond issuance.

Florida Affordable Housing Guarantee Program

The Florida Affordable Housing Guarantee Program was created in 1992 to work in concert with federal, state and local government financing sources to effectively lower the overall cost of borrowing capital for the construction and rehabilitation of affordable multifamily rental housing.[6] These cost savings were achieved by the Guarantee Program guaranteeing the payment of mortgages that secure multifamily mortgage revenue bonds, thus raising the loan's rating and reducing the overall cost of borrowing. In 2009, Florida Housing's board of directors officially suspended the Guarantee Program due to continually low interest rates, which prompted developers to refinance properties outside of the Guarantee Program. Currently, just one multifamily rental property holds an outstanding guarantee from this program.[7]

III. Effect of Proposed Changes:

Section 1 amends s. 420.509, F.S., to designate Florida Housing as the state fiscal agency to make the determinations required by s. 16, Article VII of the State Constitution, in connection with the issuance of Florida Housing bonds and removes the authority of the SBA to authorize an interest rate in excess of the maximum.

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[2] Affordable Housing Work Group, Overview of the State's Implementation of Rental Programs (August 2017) available at tab7.pdf (floridahousing.org) (last visited October 20, 2021). Chapter 2017-71, Laws of Fla., established the Workgroup to develop recommendations to address the state's affordable housing needs.

[3] Sections 420.509, and 420.51, F.S., and Section 16, Article VII, Florida Constitution.

[4] This section prescribes a statewide maximum bond interest rate, which is flexible with the bond market. The rate is computed by adding 300 basis points to The Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar month in which the bonds are sold.

[5] Section 420.509(4), F.S.

[6] s. 420.5092, F.S.

[7] Florida Housing Finance Corporation, 2020 Annual Report, p. 19. Available at https://www.floridahousing.org/data-docs-reports/annual-reports (last visited November 1, 2021).

The section also allows, where applicable, Florida Housing to use the interest rate limitation on bond issuance set forth in s. 159.825, F.S. This change allows Florida Housing to bear higher interest on taxable bonds without seeking SBA approval.

Section 2 amends s. 420.5092, F.S., to remove the requirement for the Florida Housing Guarantee Program, now suspended, that the program's fund's financial rating remain consistent with rules adopted by the SBA. This is a technical change to conform to the bill's removal of the SBA from oversight responsibility.

Section 3 provides that the bill shall take effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to Florida Housing, the multi-layer review process can cause unpredictable delays and subject transactions to market volatility. This bill would ameliorate that concern and positively impact Florida Housing's ability to reliably issue bonds.[8]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 420.509 and 420.5092 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.

[8] Email from Stephanie Sutton, External Affairs Director, Florida Housing, October 11, 2021 (on file with Senate Committee on Community Affairs).

By Senator Rodriguez

39-00404B-22 2022196__

A bill to be entitled

An act relating to the Florida Housing Finance Corporation; amending s. 420.509, F.S.; designating the corporation, rather than the State Board of Administration, as the state fiscal agency to make determinations in connection with specified bonds; authorizing the corporation's board of directors, rather than the State Board of Administration, to delegate to its executive director the authority and power to perform that function; requiring the executive director to annually report specified information to the board of directors, rather than the State Board of Administration; revising applicable interest rate limitations on bonds of the corporation; amending s. 420.5092, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 420.509, Florida Statutes, are amended to read:

420.509 Revenue bonds.—

(2) The corporation ~~State Board of Administration~~ is designated as the state fiscal agency to make the determinations required by s. 16, Art. VII of the State Constitution in connection with the issuance of such bonds that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for such

39-00404B-22 2022196__

debt service requirements. The corporation's board of directors ~~State Board of Administration~~ may delegate to its executive director the authority and power to perform that function ~~without further review of the agency~~. The determinations pursuant to this subsection ~~paragraph~~ are limited to a review of the matters essential to making the determinations required by s. 16, Art. VII of the State Constitution. The executive director shall report annually to the board ~~State Board of Administration~~ and the Legislature regarding the number of bond issues considered and the determination with respect thereto.

(4) Bonds of the corporation may:

(a) Bear interest at a rate or rates not exceeding the interest rate limitation set forth in s. 159.825 or s. 215.84, as applicable ~~s. 215.84(3), unless the State Board of Administration authorizes an interest rate in excess of such maximum~~;

(b) Have such provisions for payment at maturity and redemption before maturity at such time or times and at such price or prices; and

(c) Be payable at such place or places within or without the state as the board determines by resolution.

Section 2. Paragraph (b) of subsection (6) of section 420.5092, Florida Statutes, is amended to read:

420.5092 Florida Affordable Housing Guarantee Program.—

(6)

(b) If the claims payment obligations under affordable housing guarantees from amounts on deposit in the guarantee fund would cause the claims paying rating assigned to the guarantee fund to be less than the third-highest rating classification of

any nationally recognized rating service, which classifications being consistent with s. 215.84(3) ~~and rules adopted thereto by the State Board of Administration~~, the corporation shall certify to the Chief Financial Officer the amount of such claims payment obligations. Upon receipt of such certification, the Chief Financial Officer shall transfer to the guarantee fund, from the first available taxes distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the ensuing state fiscal year, the amount certified as necessary to meet such obligations, such transfer to be subordinate to any transfer referenced in paragraph (a) and not to exceed 50 percent of the amounts distributed to the State Housing Trust Fund pursuant to s. 201.15(4)(c) and (d) during the preceding state fiscal year.

Section 3. This act shall take effect July 1, 2022.

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 224
INTRODUCER:	Senators Gruters and Bradley
SUBJECT:	Regulation of Smoking in Public Places
DATE:	October 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Favorable**
2.			EN	
3.			RC	

I. Summary:

SB 224 amends the "Florida Clean Indoor Air Act" in part II of ch. 386, F.S., which regulates vaping and tobacco smoking in Florida. The bill allows counties and municipalities to restrict smoking within the boundaries of any of the public beaches and public parks they own. Currently, the regulation of smoking is preempted to the state, and counties and municipalities are prohibited from regulating smoking. "Smoking" is defined in ch. 386, F.S., as "inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product."

The bill also prohibits smoking within the boundaries of a state park and changes the title of the "Florida Clean Indoor Air Act" to the "Florida Clean Air Act" to account for the broader application of the act proposed in the bill. The bill takes effect on July 1, 2022.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.[1]

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an "enclosed indoor workplace," in part, as "any

[1] Section 386.202, F.S.

place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers … without regard to whether work is occurring at any given time." The amendment defines "work" as "any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not." The amendment provides limited exceptions for private residences "whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof," retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement, and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[2] The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a "vapor-generating electronic device retailer."

The amendment defines a "vapor-generating electronic device retailer" to mean "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental."

A vapor-generating electronic device is defined as "any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance." The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridge for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations;

[2] Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. *See* FLA. CONST. art II, s. 7.

provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended part II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;[3] stand-alone bars;[4] designated smoking rooms in hotels and other public lodging establishments;[5] and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.[6]

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.[7] The penalty for a first violation is a fine of not less than $250 and not more than $750. The act provides fines for subsequent violations in the amount of not less than $500 and not more than $2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

During the 2019 Regular Session, the Legislature amended part II of ch. 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[8]

[3] Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.
[4] Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.
[5] Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.
[6] Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.
[7] The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.
[8] *See* ch. 2019-14, Laws of Fla.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed $25 or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[9]

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.[10]

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state's preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution's grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.[11] The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,[12] authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

[9] Section 386.212(3), F.S.
[10] Section 386.212(4), F.S.
[11] Op. Att'y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att'y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.
[12] Chapter 2011-108, L.O.F.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.[13] For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.[14] Parks provide a variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.[15]Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the City of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.[16]

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.[17]

Florida's State Parks

Florida's award-winning state park system contains 175 state parks, including nearly 800,000 acres of state lands and 100 miles of sandy beaches.[18] Florida's state parks include all real property in the state of Florida under the jurisdiction of the Department of Environmental Protection's (DEP) Division of Recreation and Parks (division) or real property that may come under the division's jurisdiction regardless of its designation.[19] There are numerous designations in Florida's state park system, and examples include state park, state preserve, historic site, archaeological site, botanical site, museum, and culture center.[20] The statutory law governing Florida's state parks is primarily contained in ch. 258, F.S., State Parks and Preserves.

Requirements and prohibitions under ch. 258, F.S., are enforced by DEP and the Fish and Wildlife Conservation Commission's Division of Law Enforcement.[21] The Division of Law Enforcement regulations contain a rule about fires which prohibits disposing of smoking materials within any park except in designated receptacles.[22]

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[13] Florida Division of Recreation and Parks, *Frequently Asked Questions, available at:* http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf (last visited Oct 21, 2021).
[14] Orange County Government Florida, *Parks, available at:* http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk (last visited Oct 21, 2021).
[15] *Id.*
[16]City of Winter Park, *Parks, available at:* https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/ (last visited Oct 21, 2021).
[17] Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory, available at:* https://floridadep.gov/parks/florida-outdoor-recreation-inventory (last visited Oct 21, 2021).
[18] DEP, *Division of Recreation and Parks, available at:* https://floridadep.gov/parks (last visited Oct 21, 2021).
[19] Fla. Admin. Code R. 62D-2.013(1).
[20] *Id.*
[21] Section 258.601, F.S.
[22] Fla. Admin. Code R. 62D-2.013(3); National Fire Protection Association, Public Education, *Smoking, available at:* https://www.nfpa.org/Public-Education/By-topic/Top-causes-of-fire/Smoking (last visited Oct 21, 2021). The term "smoking materials" is commonly used to refer to cigarettes, pipes, and cigars.

Laws in Other States

In 2009, Maine passed a law prohibiting "[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site."[23] In 2015, Hawaii passed a law prohibiting smoking within its state park system.[24] In 2018, New Jersey banned smoking at public parks and beaches.[25] New Jersey's legislature found that "[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]"[26]

Alaska law prohibits individuals from smoking outdoors "within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present."[27] Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.[28]

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.[29] Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.[30]

Health and Environmental Concerns

In 2019, an estimated 14.8 percent of the adults in Florida were tobacco smokers.[31] Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.[32] Exposure to secondhand smoke can cause numerous health problems

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[23] Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, "'Smoking' includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. 'Smoking' includes the use of an electronic smoking device."

[24] Haw. Rev. Stat. Ann. § 184-4.5. "Smoking" is defined in the statute as "inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device."

[25] 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), *available at:* https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF (last visited Oct 21, 2021). The law defines "smoking" as "the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device."

[26] N.J. Stat. Ann. § 26:3D-56(e).

[27] Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines "smoking" as "using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation."

[28] Okla. Stat. Ann. tit. 21, § 1247(B).

[29] Or. Admin. R. 736-010-0040(8)(j).

[30] American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), *available at:* https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf (last visited Oct 21, 2021). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

[31] United Health Foundation, America's Health Rankings, *Annual Report, available at:* https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL (last visited Jan. 13, 2021).

[32] *Id*.; National Cancer Institute available at https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet (last visited Oct 21, 2021)

and has been causally linked to cancer and other fatal diseases.[33] Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.[34] Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.[35]

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.[36] It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.[37] Furthermore, cigarette butts contain hazardous substances, and studies have shown these substances to be potentially toxic to animals.[38]

Under Florida law, it is illegal to discard any tobacco product as litter.[39] Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of $100 in addition to any court-ordered litter pickup or other commensurate labor.[40]

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.[41] Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.[42] In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.[43] Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the

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[33] Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Oct 21, 2021).
[34] Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Oct 21, 2021).
[35] Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), *available at:* https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639 (last visited Oct 12, 2021); European Respiratory Journal Sep 2016, 48 (3) 918-920 *available at* https://erj.ersjournals.com/content/48/3/918 (last visited Oct 21, 2021)
[36] NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter? available at:* https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html (last visited Oct 21, 2021)
[37] World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) *available at:* https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1 (last visited Oct 21, 2021)
[38] Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362-368, 362–363, 367 (2015), *available at:* http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Oct 21, 2021).
[39] Section 403.413(2)(d) and (f), (4), F.S.
[40] Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.
[41] Section 633.142(2)(a), F.S.
[42] Section 633.142, F.S.
[43] Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention, available at:* https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire (last visited Oct 21, 2021).

United States Forest Service shows that a significant number of wildfires were started by "smoking" between 1992 and 2018.[44]

III. Effect of Proposed Changes:

Section 1 changes the title of Part II of ch. 386, F.S., from "Indoor Air: Smoking and Vaping" to "Smoking and Vaping."

Section 2 amends s. 386.201, F.S., to provided that the short title of Part II of ch. 386, F.S., may be cited as the "Florida Clean Air Act," removing the reference to indoor air.

Section 3 amends s. 386.209, F.S., to provide counties and municipalities the authority to further restrict smoking within the boundaries of any public beaches and public parks they own. Given the existing definition of "smoking" in ch. 386, F.S., counties and municipalities may restrict the ability for any person to inhale, exhale, burn, carry, or possess any lighted tobacco product, including cigarettes, cigars, pipe tobacco, or any other lighted tobacco product, within parks and beaches owned by the county or municipality. The bill allows municipalities to further restrict smoking within county owned beaches and parks located within the municipality's jurisdiction if doing so would not conflict with a county ordinance.

Although this bill specifically relates to "smoking," counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

Section 4 creates s. 386.2095, F.S., which prohibits smoking within the boundaries of a state park.

Section 5 amends s. 381.84, F.S., to conform the reference to the short title of Part II of ch. 386, F.S., to changes made by the bill.

Section 6 amends s. 386.211, F.S., to conform references to the short title of Part II of ch. 386, F.S., to changes made by the bill.

Section 7 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[44] Short, Karen C. 2021. *Spatial wildfire occurrence data for the United States*, 1992-2018), *available at:* https://www.fs.usda.gov/rds/archive/Catalog/RDS-2013-0009.5 (last visited Jan. 13, 2021). The data can be viewed by clicking on the file labeled "RDS-2018-0009.5_ACCDB.zip," and viewing the column labeled "STAT_CAUSE_DESCR."

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Visitors to state, county, or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to the applicable fines or civil penalty for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of county and municipal beaches and parks, local governments may experience fluctuation in revenues generated by any fees for beach and park admittance.

State parks may see an increase in the number of fines that are assessed for violations of the smoking prohibition. Such fines are paid to the FWC and deposited in the State Game Trust Fund, pursuant to s. 258.008(1), F.S. Thus, the bill may increase revenue for the FWC's State Game Trust Fund.

The DEP may incur costs to adopt rules and implement the prohibition of smoking in state parks. The DEP and the FWC's Division of Law Enforcement may incur additional costs to enforce the prohibition of smoking in state parks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 386.201, 386.209, 386.2095, 381.84, and 386.211.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gruters

23-00367-22 2022224__

A bill to be entitled

An act relating to regulation of smoking in public places; revising the title of part II of ch. 386, F.S.; amending s. 386.201, F.S.; revising a short title; amending s. 386.209, F.S.; authorizing counties and municipalities to further restrict smoking within the boundaries of public beaches and public parks under certain circumstances; creating s. 386.2095, F.S.; prohibiting smoking within the boundaries of a state park; amending ss. 381.84 and 386.211, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Part II of chapter 386, Florida Statutes, entitled "INDOOR AIR: SMOKING AND VAPING," is renamed "SMOKING AND VAPING."

Section 2. Section 386.201, Florida Statutes, is amended to read:

386.201 Short title ~~Popular name~~.—This part may be cited as ~~by the popular name~~ the "Florida Clean ~~Indoor~~ Air Act."

Section 3. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject; however, counties and municipalities may further restrict smoking within the boundaries of any public beaches or public parks that they own. Municipalities may further restrict smoking within the boundaries of any public beaches or public parks that are within their jurisdiction but are owned by the county if doing so would not conflict with a county ordinance. School districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

Section 4. Section 386.2095, Florida Statutes, is created to read:

386.2095 Smoking prohibited in state parks.—A person may not smoke within the boundaries of a state park.

Section 5. Paragraph (h) of subsection (3) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The program shall include the following components, each of which shall focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(h) *Enforcement and awareness of related laws.*—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws,

rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Florida Clean ~~Indoor~~ Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

Section 6. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean ~~Indoor~~ Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean ~~indoor~~ air state and that smoking and vaping are prohibited except as provided in this part.

Section 7. This act shall take effect July 1, 2022.

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 228
INTRODUCER:	Senators Rodriguez, Burgess and Hutson
SUBJECT:	Resiliency Energy Environment Florida Programs
DATE:	November 1, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 228 substantially amends the Property Assessed Clean Energy program, which allows property owners to make qualifying improvements to real property and finance the cost through annual non-ad valorem tax assessments. Qualifying improvements are those that enhance energy efficiency, renewable energy, and wind resistance. The bill names the program the Resiliency Energy Environment Florida program and enhances protections for consumers entering into PACE contracts. The bill further allows governmental leased property to qualify for the program.

The bill takes effect July 1, 2022.

II. Present Situation:

PACE in Florida

In 2010, the Legislature authorized local governments[1] to fund property owners making qualifying improvements and to establish a financing agreement for the repayment of such costs through annual non-ad valorem property tax assessments. Although Florida's law does not use the terms "PACE" or "Property Accessed Clean Energy," it is generally understood that s. 163.08, F.S., is Florida's PACE program.[2]

Through a PACE program, a property owner may apply to a local government for funding to enhance energy conservation and efficiency improvements, such as energy-efficient HVAC systems, replacement of windows, electric vehicle charging equipment, and efficient lighting

[1] "Local government" means a county, municipality, a dependent special district as defined in s. 189.012, F.S., or a separate legal entity created pursuant to s. 163.01(7), F.S.

[2] *See generally* Erin Deady, *Property Assessed Clean Energy: Is There Finally a Clear Path to Success?* Florida Bar Journal Vol. 90, No. 6, June 2016, pg. 114, available at https://www.floridabar.org/the-florida-bar-journal/property-assessed-clean-energy-is-there-finally-a-clear-path-to-success/ (last accessed Oct. 27, 2021).

equipment; renewable energy improvements utilizing hydrogen, solar, geothermal, and wind energy; and wind resistance improvements such as wind-resistant shingles, gable-end bracing, storm shutters, and opening protections.[3]

PACE programs in Florida are formed by local governments and operate typically in partnership with several localities pursuant to an interlocal agreement. Additionally, PACE programs in Florida can be operated by a third-party PACE administrator, which is either a for-profit or not-for-profit entity acting on behalf of the local government.[4] However, it is the local government that enters into a financing agreement directly with the property owner.[5]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment.[6] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable." However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay for the qualifying improvement. [7]

Qualifying Improvements

The types of projects PACE financing may fund are referred to as "qualifying improvements." A local government may not offer PACE financing for any project not included in the statutory definition of qualifying improvements. As provided in current law, qualifying improvements include the following:

- Energy conservation and efficiency improvements,[8] to include:
  - Air sealing;
  - Installation of insulation;
  - Installation of energy efficient HVAC systems;
  - Building modifications which increase the use of daylight;
  - Replacement of windows;
  - Installation of energy controls or energy recovery systems;
  - Installation of electric vehicle charging equipment; and
  - Installation of efficient lighting equipment.
- Renewable energy improvements,[9] which means installation of any system in which the electrical, mechanical, or thermal energy is produced from a method utilizing hydrogen, solar energy, geothermal energy, bioenergy, or wind energy.
- Wind resistance improvements,[10] to include
  - Improving the strength of the roof deck attachment;
  - Creating a secondary water barrier to prevent water intrusion;
  - Installing wind-resistant shingles;

[3] Section 163.08(2)(b), F.S.
[4] Section 163.08(6), F.S.
[5] Section 163.08(8), F.S.
[6] Section 163.08(13), F.S.
[7] Section 163.08(15), F.S.
[8] Section 163.08(2)(b)1., F.S.
[9] Section 163.08(2)(b)2., F.S.
[10] Section 163.08(2)(b)3., F.S.

- Installing gable-end bracing;
- Reinforcing roof-to-wall connections;
- Installing storm shutters; and
- Installing opening protections.

Wind resistance improvements applied to buildings under new construction do not qualify for PACE financing.[11]

Florida PACE Consumer Protections

Current law provides that, before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments are current and have been paid for the preceding 3 years;
- There are no involuntary liens including construction liens;
- There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years; and
- The property owner is current on all mortgage debt on the property.[12]

Further, any work requiring a license to make a qualifying improvement must be performed by a properly certified or registered contractor.[13] The total amount of PACE assessments for any property may not exceed 20 percent of the property's market value, in most cases.[14]

Consumer Protections for Residential PACE Financing Generally

Concerns have arisen about issues consumers may face regarding residential PACE financing. Because the PACE financing is structured as a tax assessment instead of a loan, PACE programs historically have not been required to provide homeowners with the same disclosures about the financing costs that traditional lenders must provide.

Additionally, the tax liens for PACE financing take priority over other lien-holders, including the property's mortgage holder.[15] Such priority has influenced Fannie Mae and Freddie Mac to refuse the purchase of loans with existing PACE-based tax assessments,[16] and properties encumbered with PACE obligations are not eligible for Federal Housing Administration insured financing.[17] However, priority lien position protects local governments, who are authorized to take on debt for the financing they provide.[18] Advocates also state that the priority lien position

[11] Section 163.08(10), F.S.
[12] Section 163.08(9), F.S.
[13] Section 163.08(11), F.S.
[14] Section 163.08(12), F.S.
[15] Debra Gruszecki, INLAND: Realtors Offer Word of Warning About Solar Financing Program," Jan. 19, 2015, The Press-Enterprise, available at https://www.pe.com/2015/01/19/inland-realtors-offer-word-of-warning-about-solar-financing-program/ (last accessed March 14, 2021).
[16] FHFA, *Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens* (Dec. 22, 2014) (last visited Oct. 27, 2021).
[17] "ML 2017-18: Property Assessed Clean Energy (PACE)," December 7, 2017, U.S. Department of Housing and Urban Development, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf (last accessed Oct. 27, 2021).
[18] Section 163.08(7), F.S.

enables local governments to offer competitive interest rates, ranging from approximately 6 to 9 percent.[19]

Consumer Financial Protection Bureau Steps

In 2018, the United States Congress directed the Consumer Financial Protection Bureau (CFPB) to promulgate regulations regarding PACE financing.[20] The CFPB has issued advance notices of proposed rulemaking in order to apply the Truth in Lending Act's ability-to-repay requirements, currently in place for residential mortgage loans, to PACE financing.[21]

The existing federal ability-to-repay requirements prohibit creditors from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance, and assessments.[22] In making such a determination, the creditor must verify and consider specific factors including the consumer's income, assets, and existing debt obligations.[23] The Truth in Lending Act's stated purpose is "to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive."[24]

The CFPB's regulations on residential PACE financing are still in development and have not been finalized at this time.

California's Consumer Protection Measures

California, one of the three states currently offering residential PACE financing,[25] has taken measures to protect consumers independent of federal regulation. In 2016, California's law changed to require PACE programs to provide mortgage-level disclosures and to conduct live recorded calls with homeowners to confirm financing terms and obligations.[26]

In 2017, California legislation required that PACE program administrators be licensed by the California Department of Financial Protection and Innovation, provided oversight for contractors and third party solicitors, and authorized the same department to bring enforcement actions against PACE administrators and contractors. The law also required that a PACE administrator thoroughly determine the property owner's ability to repay the loan before approving a financing

[19] *AboutPACE*, Florida PACE Funding Agency, available at https://floridapace.gov/about-pace/ (last visited Oct. 27, 2021).
[20] Section 307, Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law No 115-174 (May 24, 2018).
[21] Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, Docket No. CFPB-2019-0011, available at https://files.consumerfinance.gov/f/documents/cfpb_anpr_residential-property-assessed-clean-energy-financing.pdf (last accessed Oct. 27, 2021).
[22] Id., citing TILA section 129C(a), 15 U.S.C. 1639c(a).
[23] Id.
[24] 7 TILA section 129B(a)(2), 15 U.S.C. 1639b(a)(2).
[25] California, Florida, and Missouri are the only three states offering PACE financing on residential property.
[26] James Reed, "Consumer Protections for PACE Now Written into State Law," Orange County Register, October 7, 2016, available at https://www.ocregister.com/2016/10/07/consumer-protections-for-pace-now-written-into-state-law/ (last visited Oct. 27, 2021).

contract.[27] In 2021 California took further action specifically to protect senior citizens being solicited at home, criminalizing transactions that are part of a pattern in violation of specific PACE consumer protections.[28]

III. Effect of Proposed Changes:

The bill substantially amends Florida's Property Assessed Clean Energy (PACE) program in s. 163.08, F.S. It names the program the Resiliency Energy Environment Florida (REEF) program, defines key terms, expands the types of qualifying improvements, imposes new consumer protections, extends participation in the program to lessees of government property, and enacts new REEF contractor oversight and accountability provisions.

Definitions

The bill defines the following terms:

- "Assessment financing agreement" means the financing agreement, under a REEF program, between a local government and a property owner for the acquisition or installation of qualifying improvements.
- "Contractor" means an independent contractor who contracts with a property owner to install qualifying improvements.
- "Government-leased property" means real property owned by any local government which has become subject to taxation due to lease of the property to a nongovernmental lessee.
- "Non-ad valorem assessment" or "assessment" means the same as defined in s. 197.3632(1), F.S., to mean only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution.
- "Nongovernmental lessee" means a person or entity other than a local government which is the lessee of government leased real property.
- "Nonresidential real property" means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. This term includes, but is not limited to, multifamily residential property composed of five or more units, and office, commercial, industrial, agricultural, or government-leased property.
- "Program administrator" means an entity, including, but not limited to, for-profit or-not-for-profit entities, with whom a local government contracts to administer a REEF program.
- "Residential real property" means a residential property of four or fewer dwelling units which is or will be improved by a qualifying improvement.
- "Resiliency Energy Environment Florida (REEF) program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on commercial real property or residential real property.

[27] Assembly Bill 1284 (Dababneh, Chap 475, Stats. 2017) – California Financing Law: Property Assessed Clean Energy program: program administrators.
[28] Assembly Bill 790 (Quirk-Silva, Chap 589, Stats. 2021) – Consumer Legal Remedies Act.

Consumer Protection Measures

To account for recent consumer protection concerns regarding PACE financing, the bill provides regulations aimed at mitigating these concerns and ensuring consumers are well-informed of their obligations before entering into a REEF financing agreement.

Specifically, the bill provides that, before entering into a residential REEF financing agreement, a REEF administrator must reasonably determine that the property owner has the ability to pay the annual REEF assessment. This determination should be based on observations that:

- All property taxes and other assessments are current and have not been delinquent for more than 30 days for the preceding 3 years;
- There are no involuntary liens greater than $1,000, including construction liens;
- There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years;
- The property owner has recorded all other PACE assessments on the property;
- The property owner is current on all mortgage debt on the property;
- The property, if residential real property, is not subject to an existing home equity conversion mortgage or reverse mortgage product, or is not currently a residential property gifted to a homeowner by a nonprofit entity;
- The property owner is not currently in bankruptcy; and
- The total estimated annual payment amount for all assessment financing agreements funded under the REEF program does not exceed 10 percent of the property owner's annual household income. Such income should be confirmed by a reputable third party and may not be confirmed solely by the property owner.

Before entering into a residential REEF financing agreement, the REEF administrator must provide a financing estimate and disclosure to the property owner that includes:

- The total amount estimated to be funded including program fees and capitalized interest;
- The estimated annual REEF assessment;
- The term of the REEF assessment;
- The interest charged and estimated annual percentage rate;
- A description of the qualifying improvement;
- A disclosure that if the property owner sells or refinances the property, the property owner may be required to pay off the full amount owed under each REEF financing agreement;
- A disclosure that the REEF assessment will be collected alongside other property taxes, and will result in a lien on the property a lien on the property during the term of the agreement; and
- A disclosure that failure to pay the REEF assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.

The program administrator must also conduct a recorded telephone call with the property owner to confirm the following:

- That the property owner has access to the contract and financing estimates and disclosures;
- The qualifying improvement that is being financed;
- The total estimated annual costs, including fees;

- The total estimated average monthly equivalent amount required to pay such annual costs;
- The estimated date the property owner's first tax payment including the REEF assessment will come due;
- The term of the REEF financing agreement;
- That payments will cause the owner's annual tax bill to increase, that payments will be made through additional annual assessments, and that such payments will be made either directly to the county tax collector's office or through the owner's mortgage escrow account;
- That the owner has disclosed whether the property has received or is seeking additional REEF assessments and has disclosed all other REEF assessments or special taxes about to be placed on the property;
- That the property will be subject to a lien during the term of the REEF financing agreement which may require the contract to be paid in full before selling or refinancing the property;
- That any potential utility or insurance savings are not guaranteed and will not reduce the REEF or total assessment amount; and
- That the program administrator does not provide tax advice and that the owner should seek professional tax advice with questions regarding tax credits, deductibility, or other impacts of the qualifying improvement or REEF financing agreement.

A property owner may cancel the REEF financing agreement within three business days after signing the contract, without financial penalty.

The term of a REEF financing agreement may not exceed the useful life of the qualifying improvement being installed or the weighted average useful life of all qualifying improvements being financed, if multiple improvements exist. The financing term may not exceed 30 years. Additionally, a program administrator may not offer a REEF financing agreement on any residential real property that includes a negative amortization schedule, a balloon payment, or prepayment fees other than nominal administrative costs.

REEF Contractor Oversight

The bill provides that for residential real property, a program administrator may not enroll a contractor unless the administrator makes a reasonable effort to review the contractor's professional standing. This includes reviewing the appropriate licensure, permits, and registrations required for its business operations. Additionally, the administrator must obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws to include advertising and marketing laws and regulations.

Further, the bill requires a program administrator to maintain a process to enroll new contractors that includes reasonable review of each contractor's relevant work or project history, financial and reputational background, criminal background, and status on Better Business Bureau or other online platform tracking contractor reviews. A program administrator may rely on a background check conducted by the Florida Department of Business and Professional Regulation Construction Industry Licensing Board to comply with the criminal background check.

Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must confirm that the applicable work or service has been completed.

This is accomplished through either written or telephonic certification with the property owner, or through a third-party site inspection.

A program administrator may not disclose to a contractor or third party solicitor the maximum financing amount for which a residential real property owner is eligible.

A contractor should not present a higher price for a qualifying improvement on residential real property financed by a REEF financing agreement than the contractor would otherwise present were the improvement not financed by REEF.

A program administrator may not provide a contractor with any payment, fee, or kickback in exchange for referring business relating to a specific assessment financing agreement.

A program administrator must develop and implement policies and procedures for responding, tracking, and resolving questions and complaints. It must also have a process for monitoring contractors with regard to performance and compliance with program policies, and implement policies for suspending, terminating, and reinstating contractors based on violations of program policies or unscrupulous behavior. Further, a program administrator must submit a report annually showing the number of property owner complaints and what category the complaints fall into.

The bill imposes certain marketing and communications guidelines for program administrators and contractors to follow. Under these provisions, program administrators and contractors may not suggest that REEF financing is a government assistance program, that qualifying improvements are free or that REEF is a free program, or that utilizing REEF financing does not require the homeowner to repay the financial obligation. A program administrator or contractor may not make representations as to the tax deductibility of a REEF financing agreement on residential real property. They may only encourage a property owner to seek the advice of a tax professional.

Protections applying specifically to residential real property do not apply if the program administrator determines that the residential real property is owned by a business entity that owns more than four such properties, and the business entity's ownership does not reside on the property.

Government Leased Property

The bill allows REEF financing to be utilized on government-owned property that is leased to a private party. REEF financing agreements must be executed by either the local government and the lessee or if only by the lessee, the local government must provide written consent to the program administrator.

The financing agreement must state that the lessee is the only party obligated to pay the assessment. A delinquent assessment will not become a lien but will constitute a debt due and is recoverable by legal action or tax executions that lien other property of the lessees that may be

located in any county in Florida. In addition, the occupational license or corporate charter of the lessee will be revoked.[29]

The assessment financing agreement's term may not exceed the lesser of:

- The useful life of the qualifying improvement, the weighted average life of multiple qualifying improvements, or the useful life of the qualifying improvements to which the greatest portion of funds are disbursed;
- The remaining term of the lease on the government leased property; or
- Thirty years.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not affect state or local revenue.

B. Private Sector Impact:

Property owners who live within a jurisdiction that offers REEF financing will see the benefit of increased consumer protections.

[29] Section 196.199(8), F.S.

C. Government Sector Impact:

REEF programs are designed to be budget-neutral for local governments. As such, no government sector impact is expected for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.08 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rodriguez

39-00332A-22 2022228__

A bill to be entitled

An act relating to Resiliency Energy Environment Florida programs; amending s. 163.08, F.S.; defining terms; providing that a property owner may apply to a Resiliency Energy Environment Florida (REEF) program for funding to finance a qualifying improvement and may enter into an assessment financing agreement with a local government; providing that REEF program costs may be collected as non-ad valorem assessments; authorizing local governments to enter into agreements with program administrators to administer REEF programs; revising and specifying public recording requirements for assessment financing agreements and notices of lien; revising requirements that apply to local governments or program administrators in determining eligibility for assessment financing; revising requirements for qualifying improvements; revising and specifying limitations on non-ad valorem assessments; providing construction; specifying underwriting, financing estimate, disclosure, and confirmation requirements for program administrators relating to residential real property; authorizing a residential real property owner, under certain circumstances and within a certain timeframe, to cancel an assessment financing agreement without financial penalty; specifying limitations on assessment financing agreement terms for residential real property; prohibiting certain financing terms for residential real property; specifying requirements

39-00332A-22 2022228__

for, and certain prohibited acts by, program administrators relating to assessment financing agreements and contractors for qualifying improvements to residential real property; specifying additional annual reporting requirements for program administrators; specifying requirements for, and limitations on, assessment financing agreements relating to government-leased property; providing construction and applicability; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present subsection (16) of section 163.08, Florida Statutes, is redesignated as subsection (33), a new subsection (16) and subsections (17) through (32) are added to that section, and subsections (1), (2), (4), (6) through (10), (12), (13), and (14) of that section are amended, to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting

energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage.

Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies.

(c) In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(d)~~(c)~~ The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of assessment financing agreements and the related imposition of voluntary assessments, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Assessment financing agreement" means the financing agreement under a REEF program between a local government and a property owner for the acquisition or installation of qualifying improvements.

(b) "Contractor" means an independent contractor who contracts with a property owner to install qualifying improvements on real property but who is not the owner of such property.

(c) "Government-leased property" means real property owned by a local government which has become subject to taxation due to lease of the property to a nongovernmental lessee.

(d) ~~(a)~~ "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(e) "Non-ad valorem assessment" or "assessment" has the same meaning as the term "non-ad valorem assessment" as defined in s. 197.3632(1).

(f) "Nongovernmental lessee" means a person or an entity, other than a local government, which is the lessee of government-leased property.

(g) "Nonresidential real property" means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. The term includes, but is not limited to, the following:

1. Multifamily residential property composed of five or more dwelling units.

2. Office property.

3. Commercial real property.

4. Industrial property.

5. Agricultural property.

6. Government-leased property.

(h) "Program administrator" means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government contracts to administer a REEF program.

(i) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-

efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(j) "Residential real property" means a residential real property composed of four or fewer dwelling units which is or will be improved by a qualifying improvement.

(k) "Resiliency Energy Environment Florida (REEF) program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on nonresidential real property or residential real property.

(4) Subject to local government ordinance or resolution, a

property owner may apply to the REEF program ~~local government~~ for funding to finance a qualifying improvement and enter into an assessment ~~a~~ financing agreement with the local government. Costs incurred by the REEF program ~~local government~~ for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(6) A local government may enter into an agreement with a program administrator to administer a REEF program ~~A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government~~.

(7) A local government may incur debt for the purpose of providing financing for qualifying ~~such~~ improvements, which debt is payable from revenues received from the improved property~~,~~ or from any other available revenue source authorized under this section or by other law.

(8) A local government may enter into an assessment ~~a~~ financing agreement to finance or refinance a qualifying improvement only with the record owner of the affected property.

Any assessment financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be submitted for recording ~~recorded~~ in the public records of the county within which the property is located by the ~~sponsoring unit of~~ local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation. A notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. Such lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the assessment financing agreement.

(9) Before entering into an assessment ~~a~~ financing agreement, the local government, or the program administrator acting on its behalf, shall reasonably determine that:

(a) All property taxes and any other assessments levied on the same bill as property taxes are current ~~paid~~ and have not been delinquent for more than 30 days for the preceding 3 years or the property owner's period of ownership, whichever is less;

(b) ~~that~~ There are no involuntary liens greater than $1,000, including, but not limited to, construction liens on the property;

(c) ~~that~~ No notices of default or other evidence of property-based debt delinquency have been recorded and not released during the preceding 3 years or the property owner's period of ownership, whichever is less;

(d) The local government or program administrator has asked

the property owner whether any other assessments under this section have been recorded or have been funded and not yet recorded on the property. The failure of a property owner to disclose information set forth in this paragraph does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under paragraph (12)(a);

(e) ~~and that~~ The property owner is current on all mortgage debt on the property; and

(f) If the property is residential real property, it is not subject to an existing home equity conversion mortgage or reverse mortgage product or is not currently a residential property gifted to a homeowner by a nonprofit entity.

(10) Before final funding may be provided, a qualifying improvement must ~~shall~~ be affixed or planned to be affixed to a nonresidential real property or residential real ~~building or facility that is part of the~~ property and constitutes ~~shall constitute~~ an improvement to that property ~~the building or facility or a fixture attached to the building or facility~~. An assessment financing agreement may ~~between a local government and a qualifying property owner may not~~ cover qualifying ~~wind-resistance~~ improvements on nonresidential real property or residential real property ~~in buildings or facilities~~ under new construction ~~or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued~~.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by

the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market ~~just~~ value of the real property ~~as determined by the county property appraiser~~. The combined mortgage-related debt and total amount of any non-ad valorem assessments funded under this section for residential real property may not exceed 100 percent of the fair market value of the residential real property. However, the failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under this paragraph.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(i)1. ~~(2)(b)1.~~ or subparagraph (2)(i)2. which ~~(2)(b)2. that~~ is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into an assessment ~~a~~ financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into an assessment ~~a~~ financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government or program administrator. A provision in

any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into an assessment ~~a~~ financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to ~~annually~~ pay the annual ~~qualifying improvement~~ assessment.

(14) At or before the time a seller ~~purchaser~~ executes a contract for the sale ~~and purchase~~ of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller must ~~shall~~ give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by

law.

(16) Before final approval of an assessment financing agreement for a qualifying improvement on a residential real property, a program administrator shall reasonably determine that the property owner has the ability to pay the estimated annual assessment. To do so, the program administrator shall, at a minimum, use the underwriting requirements in subsection (9), confirm that the property owner is not in bankruptcy, and determine that the total estimated annual payment amount for all assessment financing agreements funded under this section on the property does not exceed 10 percent of the property owner's annual household income. Income may be confirmed using information gathered from reputable third parties that provide reasonably reliable evidence of the property owner's household income. Income may not be confirmed solely by a property owner's statement. The failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total estimated annual payment amount exceeds the amount that would otherwise be authorized under this subsection.

(17) Prior to or contemporaneously with a property owner signing an assessment financing agreement on a residential real property, the program administrator shall provide a financing estimate and disclosure to the residential real property owner which includes all of the following:

(a) The total amount estimated to be funded, including the cost of the qualifying improvements, program fees, and capitalized interest, if any.

(b) The estimated annual assessment.

(c) The term of the assessment.

(d) The interest charged and estimated annual percentage rate.

(e) A description of the qualifying improvement.

(f) A disclosure that if the property owner sells or refinances the property, the property owner, as a condition of the sale or the refinance, may be required by a mortgage lender to pay off the full amount owed under each assessment financing agreement.

(g) A disclosure that the assessment will be collected along with the property owner's property taxes and will result in a lien on the property from the date the assessment financing agreement is recorded.

(h) A disclosure that failure to pay the assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.

(18) Before a notice to proceed is issued on residential real property, the program administrator shall conduct with the residential real property owner or an authorized representative an oral, recorded telephone call during which the program administrator shall use plain language. The program administrator shall ask the residential real property owner if he or she would like to communicate primarily in a language other than English. A program administrator may not leave a voicemail to the residential real property owner to satisfy this requirement. A program administrator, as part of such telephone call, shall confirm all of the following with the residential

real property owner:

(a) That at least one residential real property owner has access to a copy of the assessment financing agreement and financing estimates and disclosures.

(b) The qualifying improvements being financed.

(c) The total estimated annual costs that the residential real property owner will have to pay under the assessment financing agreement, including applicable fees.

(d) The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.

(e) The estimated date the residential real property owner's first property tax payment that includes the assessment will be due.

(f) The term of the assessment financing agreement.

(g) That payments for the assessment financing agreement will cause the residential real property owner's annual property tax bill to increase, and that payments will be made through an additional annual assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential real property owner's mortgage escrow account.

(h) That the residential real property owner has disclosed whether the property has received, or the owner is seeking, additional assessments funded under this section and that the owner has disclosed all other assessments funded under this section which are or are about to be placed on the property.

(i) That the property will be subject to a lien during the term of the assessment financing agreement and that the obligations under the agreement may be required to be paid in full before the residential real property owner sells or refinances the property.

(j) That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.

(k) That the program administrator does not provide tax advice, and the residential real property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment financing agreement.

(19) A residential real property owner may cancel an assessment financing agreement within 3 business days after signing the assessment financing agreement without any financial penalty for doing so.

(20) The term of an assessment financing agreement on residential real property may not exceed:

(a) Thirty years; or

(b) Either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

(21) An assessment financing agreement authorized under this section on residential real property may not include any of the following financing terms:

(a) A negative amortization schedule.

(b) A balloon payment.

(c) Prepayment fees, other than nominal administrative costs.

(22) For residential real property, a program administrator:

(a) May not enroll a contractor who contracts with residential real property owners to install qualifying improvements unless:

1. The program administrator makes a reasonable effort to determine that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and insurance coverage; and

2. The program administrator obtains the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

(b) Shall maintain a process to enroll new contractors which includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks.

3. A criminal background check. A program administrator may rely on a background check conducted by the Construction Industry Licensing Board within the Department of Business and Professional Regulation to comply with this requirement.

4. Status on the Better Business Bureau online platform or another online platform that tracks contractor reviews.

(23)(a) Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must first confirm that the applicable work or service has been completed, either through a written certification from the property owner, a recorded telephone call with the property owner, review of geo-stamped and time-stamped photographs, review of a final permit, or a site inspection through third-party means.

(b) A program administrator may not disclose to a contractor or to a third party engaged in soliciting an assessment financing agreement the maximum financing amount for which a residential real property owner is eligible.

(24) A program administrator shall comply with the following marketing and communications guidelines when communicating with residential real property owners:

(a) A program administrator may not represent:

1. That the REEF program or assessment financing is a government assistance program;

2. That qualifying improvements are free or that assessment financing is a free program; or

3. That the financing of a qualifying improvement using the REEF program does not require the property owner to repay the financial obligation.

(b) A program administrator may not make any representation as to the tax deductibility of an assessment authorized under this section. A program administrator or contractor may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(25) A contractor should not present a higher price for a

qualifying improvement on residential real property financed by an assessment financing agreement than the contractor would otherwise reasonably present if the qualifying improvement was not being financed through an assessment financing agreement.

(26) A program administrator shall use appropriate methodologies or technologies to identify and verify the identity of the residential real property owners who execute an assessment financing agreement.

(27) A program administrator may not provide a contractor with any payment, fee, or kickback in exchange for referring assessment financing business relating to a specific assessment financing agreement.

(28) A program administrator shall develop and implement policies and procedures for responding, tracking, and timely helping to resolve questions and property owner complaints as soon as reasonably practicable.

(29) A program administrator shall maintain a process for monitoring contractors that contract with residential real property owners to install qualifying improvements with regard to performance and compliance with program policies and shall implement policies for suspending and terminating contractors based on violations of program policies or unscrupulous behavior. A program administrator shall maintain a policy for determining the conditions on which a contractor may be reinstated to the program.

(30) A program administrator shall provide, at a reasonable time following the end of the prior calendar year, an annual report to the dependent special district as defined in s. 189.012 or a separate legal entity created pursuant to s.

163.01(7) which it has contracted with to administer a REEF program and shall include information and data related to the following:

(a) The total number of property owner complaints received which are associated with project funding in the report year.

(b) Of the total number of complaints received associated with project funding in the report year:

1. The number and percentage of complaints that relate to the assessment financing.

2. The number and percentage of complaints that relate to a contractor or the workmanship of a contractor and are not related to assessment financing.

3. The number and percentage of complaints that relate to both a contractor and the assessment financing.

4. The number and percentage of complaints identified in subparagraphs 1., 2., and 3. which were resolved and the number and percentage of complaints that were not resolved.

(c) The percentage of complaints in subparagraphs (b)1., 2., and 3. expressed as a total of all projects funded in the report year.

(31) Notwithstanding any provision of this section to the contrary, the following applies to government-leased property:

(a) The assessment financing agreement must be executed by either:

1. The local government and the nongovernmental lessee; or

2. Solely by the nongovernmental lessee but with the written consent of the local government. Evidence of such consent must be provided to the program administrator or REEF program.

(b) The assessment financing agreement must provide that the nongovernmental lessee is the only party obligated to pay the assessment.

(c) A delinquent assessment must be enforced in the manner provided in ss. 196.199(8) and 197.432(10).

(d) The recorded assessment financing agreement, or a summary memorandum of such recorded agreement, must provide constructive notice that the assessment to be levied on the property is subject to enforcement in the manner provided in ss. 196.199(8) and 197.432(10).

(e) For purposes of subsections (9) and (13) only, references to the property owner are deemed to refer to the nongovernmental lessee and references to the period of ownership are deemed to refer to the period that the nongovernmental lessee has been leasing the property from the local government.

(f) The term of the assessment financing agreement on government-leased property may not exceed:

1. Thirty years;

2. The remaining term of the lease on the government-leased property; or

3. Either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

(32)(a) Subsections (16) through (30) do not apply to residential real property if the program administrator reasonably determines that:

1. The residential real property is owned by a business entity that owns more than four residential real properties; and

2. The business entity's managing member, partner, or beneficial owner does not reside in the residential real property.

(b) Subsections (16) through (30) apply to a program administrator only when administering a REEF program for qualifying improvements on residential real property. Subsections (16) through (30) do not apply with respect to a local government or to nonresidential real property.

Section 2. This act shall take effect July 1, 2022.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/13/2022	.	
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	.	
	.	

The Committee on Finance and Tax (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsection (16) of section 163.08, Florida Statutes, is redesignated as subsection (33), a new subsection (16) and subsections (17) through (32) are added to that section, and subsections (1), (2), (4), (6) through (10), (12), (13), and (14) of that section are amended, to read:

163.08 Supplemental authority for improvements to real

property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property’s resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved

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property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies.

(c) In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(d) ~~(c)~~ The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of assessment financing agreements and the related imposition of voluntary assessments, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Assessment financing agreement" means the financing agreement, under a REEF program, between a local government and

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a property owner for the acquisition or installation of qualifying improvements.

(b) "Government-leased property" means real property owned by a local government which has become subject to taxation due to lease of the property to a nongovernmental lessee.

(c) ~~(a)~~ "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(d) "Non-ad valorem assessment" or "assessment" has the same meaning as the term "non-ad valorem assessment" as defined in s. 197.3632(1).

(e) "Nongovernmental lessee" means a person or an entity, other than a local government, which is the lessee of government-leased property.

(f) "Nonresidential real property" means any property not defined as residential real property and which will be or has been improved by a qualifying improvement. The term includes, but is not limited to, the following:

1. Multifamily residential property composed of five or more dwelling units.

2. Office property.

3. Commercial real property.

4. Industrial property.

5. Agricultural property.

6. Government-leased property.

(g) "Program administrator" means an entity, including, but not limited to, a for-profit or not-for-profit entity, with which a local government may contract to administer a REEF program.

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(h) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(i) "Residential real property" means a residential real property composed of four or fewer dwelling units which has been or will be improved by a qualifying improvement.


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(j) "Resiliency Energy Environment Florida (REEF) program" means a program established by a local government, alone or in partnership with other local governments or a program administrator, to finance qualifying improvements on nonresidential real property or residential real property.

(4) Subject to local government ordinance or resolution, a property owner may apply to the REEF program ~~local government~~ for funding to finance a qualifying improvement and enter into an assessment ~~a~~ financing agreement with the local government. Costs incurred by the REEF program ~~local government~~ for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(6) A local government may enter into an agreement with a program administrator to administer a REEF program on behalf of the local government ~~A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government~~.

(7) A local government may incur debt for the purpose of

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providing financing for qualifying ~~such~~ improvements, which debt is payable from revenues received from the improved property~~,~~ or from any other available revenue source authorized under this section or by other law.

(8) A local government may enter into an assessment ~~a~~ financing agreement to finance or refinance a qualifying improvement only with the record owner of the affected property. Any assessment financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be submitted for recording ~~recorded~~ in the public records of the county within which the property is located by the ~~sponsoring unit of~~ local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation. A notice of lien for the full amount of the financing may be recorded in the public records of the county where the property is located. Such lien shall not be enforceable in a manner that results in the acceleration of the remaining nondelinquent unpaid balance under the assessment financing agreement.

(9) Before entering into an assessment ~~a~~ financing agreement, the local government, or the program administrator acting on its behalf, shall reasonably determine that all of the following conditions are met:

(a) All property taxes and any other assessments levied on the same bill as property taxes are current ~~paid~~ and have not been delinquent for more than 30 days for the preceding 3 years or the property owner's period of ownership, whichever is less.~~;~~

(b) ~~that~~ There are no involuntary liens greater than $1,000, including, but not limited to, construction liens on the property.~~;~~

(c) ~~that~~ No notices of default or other evidence of property-based debt delinquency have been recorded and not released during the preceding 3 years or the property owner's period of ownership, whichever is less.~~;~~

(d) The local government or program administrator has asked the property owner whether any other assessments under this section have been recorded or have been funded and not yet recorded on the property. The failure of a property owner to disclose information set forth in this paragraph does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under paragraph (12)(a).

(e) ~~and that~~ The property owner is current on all mortgage debt on the property.

(f) The residential property is not subject to an existing home equity conversion mortgage or reverse mortgage product. This paragraph does not apply to nonresidential real properties.

(g) The property is not currently a residential property gifted to a homeowner for free by a nonprofit entity as may be disclosed by the property owner. The failure of a property owner to disclose information set forth in this paragraph does not invalidate an assessment financing agreement or any obligation thereunder. This paragraph does not apply to nonresidential real properties.

(10) Before final funding may be provided, a qualifying

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improvement must ~~shall~~ be affixed or planned to be affixed to a nonresidential real property or residential real ~~building or facility that is part of the~~ property and constitutes ~~shall constitute~~ an improvement to that property ~~the building or facility or a fixture attached to the building or facility~~. An assessment financing agreement may ~~between a local government and a qualifying property owner may not~~ cover qualifying ~~wind-resistance~~ improvements on nonresidential real property under new construction or residential real property ~~in buildings or facilities~~ under new construction ~~or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued~~.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market ~~just~~ value of the real property ~~as determined by the county property appraiser~~. The combined mortgage-related debt and total amount of any non-ad valorem assessments funded under this section for residential real property may not exceed 100 percent of the fair market value of the residential real property. However, the failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvements exceeds the amount that would otherwise be authorized under this paragraph. For purposes of this paragraph, fair market value may be determined using reputable third parties.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(h)1. ~~(2)(b)1.~~ or subparagraph (2)(h)2. which ~~(2)(b)2. that~~ is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into an assessment ~~a~~ financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into an assessment ~~a~~ financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into an assessment ~~a~~ financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to ~~annually~~ pay the annual ~~qualifying improvement~~ assessment.

(14) At or before the time a seller ~~purchaser~~ executes a contract for the sale ~~and purchase~~ of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller must ~~shall~~ give the

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prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(16) Before final approval of an assessment financing agreement for a qualifying improvement on a residential real property, a program administrator shall reasonably determine that the property owner has the ability to pay the estimated annual assessment. To do so, the program administrator shall, at a minimum, use the underwriting requirements in subsection (9), confirm that the property owner is not in bankruptcy, and determine that the total estimated annual payment amount for all assessment financing agreements funded under this section on the property does not exceed 10 percent of the property owner's annual household income. Income may be confirmed using information gathered from reputable third parties that provide

reasonably reliable evidence of the property owner's household income. Income may not be confirmed solely by a property owner's statement. The failure of a property owner to disclose information set forth in paragraph (9)(d) does not invalidate an assessment financing agreement or any obligation thereunder, even if the total estimated annual payment amount exceeds the amount that would otherwise be authorized under this subsection.

(17) Prior to or contemporaneously with a property owner signing an assessment financing agreement on a residential real property, the program administrator shall provide a financing estimate and disclosure to the residential real property owner which includes all of the following:

(a) The total amount estimated to be funded, including the cost of the qualifying improvements, program fees, and capitalized interest, if any.

(b) The estimated annual assessment.

(c) The term of the assessment.

(d) The interest charged and estimated annual percentage rate.

(e) A description of the qualifying improvement.

(f) A disclosure that if the property owner sells or refinances the property, the property owner, as a condition of the sale or the refinance, may be required by a mortgage lender to pay off the full amount owed under each assessment financing agreement.

(g) A disclosure that the assessment will be collected along with the property owner's property taxes and will result in a lien on the property from the date the assessment financing agreement is recorded.

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(h) A disclosure that failure to pay the assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.

(18) Before a notice to proceed is issued on residential real property, the program administrator shall conduct with the residential real property owner or an authorized representative an oral, recorded telephone call. The program administrator shall ask the residential real property owner if he or she would like to communicate primarily in a language other than English. A program administrator may not leave a voicemail to the residential real property owner to satisfy this requirement. A program administrator, as part of such telephone call, shall confirm all of the following with the residential real property owner:

(a) That at least one residential real property owner has access to a copy of the assessment financing agreement and financing estimates and disclosures.

(b) The qualifying improvements being financed.

(c) The total estimated annual costs that the residential real property owner will have to pay under the assessment financing agreement, including applicable fees.

(d) The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees.

(e) The estimated date the residential real property owner’s first property tax payment that includes the assessment will be due.

(f) The term of the assessment financing agreement.

(g) That payments for the assessment financing agreement will cause the residential real property owner's annual property tax bill to increase, and that payments will be made through an additional annual assessment on the property and either will be paid directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential real property owner's mortgage escrow account.

(h) That the residential real property owner has disclosed whether the property has received, or the owner is seeking, additional assessments funded under this section and that the owner has disclosed all other assessments funded under this section which are or are about to be placed on the property.

(i) That the property will be subject to a lien during the term of the assessment financing agreement and that the obligations under the agreement may be required to be paid in full before the residential real property owner sells or refinances the property.

(j) That any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.

(k) That the program administrator does not provide tax advice, and the residential real property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment financing agreement.

(19) A residential real property owner may cancel an assessment financing agreement within 3 business days after

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signing the assessment financing agreement without any financial penalty from the program administrator for doing so.

(20) The term of an assessment financing agreement on residential real property may not exceed the lesser of:

(a) Thirty years; or

(b) The greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

(21) An assessment financing agreement authorized under this section on residential real property may not include any of the following financing terms:

(a) A negative amortization schedule. Capitalized interest included in the original balance of the assessment financing agreement does not constitute negative amortization.

(b) A balloon payment.

(c) Prepayment fees, other than nominal administrative costs.

(22) For residential real property, a program administrator:

(a) May not enroll a contractor who contracts with residential real property owners to install qualifying improvements unless:

1. The program administrator makes a reasonable effort to review that the contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permit, license, or registration required for engaging in business in the jurisdiction in which he or she operates and that the contractor maintains all state-required bond and

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insurance coverage; and

2. The program administrator obtains the contractor's written agreement that the contractor will act in accordance with all applicable laws, including applicable advertising and marketing laws and regulations.

(b) Shall maintain a process to enroll new contractors which includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks.

3. A criminal background check.

4. Status on the Better Business Bureau online platform or another online platform that tracks contractor reviews.

(c) A program administrator may pay or reimburse contractors for any expense allowable under applicable state law and not otherwise prohibited under this section, including, but not limited to, marketing, training, and promotions.

(23)(a) Before disbursing funds to a contractor for a qualifying improvement on residential real property, a program administrator must first confirm that the applicable work or service has been completed through any of the following:

1. A written certification from the property owner;

2. A recorded telephone call with the property owner;

3. A review of geotagged and time-stamped photographs;

4. A review of a final permit; or

5. A site inspection through third-party means.

(b) A program administrator may not disclose to a contractor or to a third party engaged in soliciting an assessment financing agreement the maximum financing amount for

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which a residential real property owner is eligible.

(24) A program administrator shall comply with the following marketing and communications guidelines when communicating with residential real property owners:

(a) A program administrator may not represent:

1. That the REEF program or assessment financing is a government assistance program;

2. That qualifying improvements are free or that assessment financing is a free program; or

3. That the financing of a qualifying improvement using the REEF program does not require the property owner to repay the financial obligation.

(b) A program administrator may not make any representation as to the tax deductibility of an assessment authorized under this section. A program administrator may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(25) A contractor should not present a higher price for a qualifying improvement on residential real property financed by an assessment financing agreement than the contractor would otherwise reasonably present if the qualifying improvement was not being financed through an assessment financing agreement.

(26) A program administrator shall use appropriate methodologies or technologies to identify and verify the identity of the residential real property owner who executes an assessment financing agreement.

(27) A program administrator may not provide a contractor with any payment, fee, or kickback in exchange for referring assessment financing business relating to a specific assessment

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financing agreement on residential real property.

(28) A program administrator shall develop and implement policies and procedures for responding to, tracking, and helping to resolve questions and property owner complaints as soon as reasonably practicable.

(29) A program administrator shall maintain a process for monitoring enrolled contractors that contract with residential real property owners to install qualifying improvements with regard to performance and compliance with program policies and shall implement policies for suspending and terminating enrolled contractors based on violations of program policies or unscrupulous behavior. A program administrator shall maintain a policy for determining the conditions on which a contractor may be reinstated to the program.

(30) A program administrator shall provide, at a reasonable time following the end of the prior calendar year, an annual report to the dependent special district as defined in s. 189.012 or a separate legal entity created pursuant to s. 163.01(7) which it has contracted with to administer a REEF program and shall include information and data related to the following:

(a) The total number of property owner complaints received which are associated with project funding in the report year.

(b) Of the total number of property owner complaints received associated with project funding in the report year:

1. The number and percentage of complaints that relate to the assessment financing.

2. The number and percentage of complaints that relate to a contractor or the workmanship of a contractor and are not

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related to assessment financing.

3. The number and percentage of complaints that relate to both a contractor and the assessment financing.

4. The number and percentage of complaints identified in subparagraphs 1., 2., and 3. which were resolved and the number and percentage of property owner complaints that were not resolved.

(c) The percentage of property owner complaints in subparagraphs (b)1., 2., and 3. expressed as a total of all projects funded in the report year.

(31) Notwithstanding any provision of this section to the contrary, the following applies to government-leased property:

(a) The assessment financing agreement must be executed by either:

1. The local government and the nongovernmental lessee; or

2. Solely by the nongovernmental lessee but with the written consent of the local government. Evidence of such consent must be provided to the program administrator or REEF program.

(b) The assessment financing agreement must provide that the nongovernmental lessee is the only party obligated to pay the assessment.

(c) A delinquent assessment must be enforced in the manner provided in ss. 196.199(8) and 197.432(10).

(d) The recorded assessment financing agreement, or a summary memorandum of such recorded agreement, must provide constructive notice that the assessment to be levied on the property is subject to enforcement in the manner provided in ss. 196.199(8) and 197.432(10).

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(e) For purposes of subsections (9) and (13) only, references to the property owner are deemed to refer to the nongovernmental lessee and references to the period of ownership are deemed to refer to the period that the nongovernmental lessee has been leasing the property from the local government.

(f) The term of the assessment financing agreement on government-leased property may not exceed the lesser of:

1. Thirty years;

2. The remaining term of the lease on the government-leased property; or

3. The greater of either the weighted average estimated useful life of all qualifying improvements being financed or the estimated useful life of the qualifying improvements to which the greatest portion of funds is disbursed.

(32)(a) Subsections (16) through (30) do not apply to residential real property if the program administrator reasonably determines that:

1. The residential real property is owned by a business entity that owns more than four residential real properties; and

2. The business entity's managing member, partner, or beneficial owner does not reside in the residential real property.

(b) Subsections (16) through (30) apply to a program administrator only when administering a REEF program for qualifying improvements on residential real property. Subsections (16) through (30) do not apply with respect to a local government, to residential property owned by a local government, or to nonresidential real property.

Section 2. This act shall take effect July 1, 2022.

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562
563 ================ T I T L E A M E N D M E N T ================
564 And the title is amended as follows:
565 Delete everything before the enacting clause
566 and insert:
567 A bill to be entitled
568 An act relating to Resiliency Energy Environment
569 Florida programs; amending s. 163.08, F.S.; defining
570 terms; providing that a property owner may apply to a
571 Resiliency Energy Environment Florida (REEF) program
572 for funding to finance a qualifying improvement and
573 may enter into an assessment financing agreement with
574 a local government; providing that REEF program costs
575 may be collected as non-ad valorem assessments;
576 authorizing a local government to enter into an
577 agreement with a program administrator to administer a
578 REEF program on the local government's behalf;
579 revising and specifying public recording requirements
580 for assessment financing agreements and notices of
581 lien; revising requirements that apply to local
582 governments or program administrators in determining
583 eligibility for assessment financing; revising
584 requirements for qualifying improvements; revising the
585 calculation of non-ad valorem assessment limits;
586 providing construction; specifying underwriting,
587 financing estimate, disclosure, and confirmation
588 requirements for program administrators relating to
589 residential real property; authorizing a residential
590 real property owner, under certain circumstances and

within a certain timeframe, to cancel an assessment financing agreement without financial penalty; specifying limitations on assessment financing agreement terms for residential real property; prohibiting certain financing terms for residential real property; specifying requirements for, and certain prohibited acts by, program administrators relating to assessment financing agreements and contractors for qualifying improvements to residential real property; specifying additional annual reporting requirements for program administrators; specifying requirements for, and limitations on, assessment financing agreements relating to government-leased property; providing construction and applicability; conforming provisions to changes made by the act; providing an effective date.

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 352
INTRODUCER:	Senator Hooper
SUBJECT:	Construction Liens
DATE:	October 29, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Favorable**
2.			RI	
3.			RC	

I. Summary:

SB 352 increases the threshold amount from $7,500 to $15,000 in direct contracts to repair or replace an existing heating or air-conditioning system in which a notice of commencement need not be filed.

II. Present Situation:

Construction Lien Law

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved, and are known as lienors. Mechanisms that address these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S.

While "construction lien" is not defined in the chapter, s. 713.015, F.S., provides that any direct contract greater than $2,500 between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings, must contain a notice that a claim of lien may be filed on their property if they fail to pay their contractor, or their contractor or subcontractor fails to pay other lienors, even if the owner paid the contractor in full. Further it notifies the owner that if a lien is filed their property could be sold against their will to pay for labor, services, or materials that have been not been paid to a lienor.[1]

[1] Section 713.015, F.S dictates that the notice must be printed in no less than 12-point, capitalized, boldfaced type on the front page of the contract.

These mechanisms to ensure payment are especially important where many lienors who are not in privity[2] with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the construction lien laws.

When issuing a building permit for improvement to real property an issuing authority (i.e., a local government) has certain notice requirements under ch. 713.135 F.S., on the permit for any contract over $2,500.

When any person applies for a building permit, the authority issuing the permit is required to:

- Print on the face of each permit card a statement that the owner's failure to record a notice of commencement may result in the owner paying twice for improvements to the property;[3]
- Provide the applicant and the owner of the real property with a printed statement that the person who has contracted for the improvement may be subject to attachment under the construction lien law. The authority must also provide the applicant with a statement from the Department of Business and Professional Regulation providing a summary of the Construction Lien Law. The statement must also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice to owner;[4] and
- Inform each applicant that they must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.[5]

Notice of Commencement

A construction project generally begins with the posting of a "notice of commencement" on the job site and the recording of the notice in the county clerk's office.[6] The recording of a notice of commencement is meant to give constructive notice to an owner of real property that claims of lien may be recorded against that property, and which liens may take priority. It does not constitute a lien, cloud, or encumbrance on real property.[7]

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.[8] A notice to owner informs the owner of all potential lienors' identity and work performed.[9] Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property.[10] Upon receipt of a notice to owner, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full.

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[2] According to Black's Law Dictionary (10th ed., 2014) the term privity is used to indicate a "connection or relationship between two parties, each having a legally recognized interest in the same subject matter," for example a direct contract.
[3] Section 713.135(1)(a), F.S.
[4] Section 713.135(1)(b), F.S.
[5] Section 713.135(1)(c), F.S.
[6] Section 713.13(1)(a), F.S.
[7] Section 713.13(3), F.S.
[8] Sections 255.05(2)(a)2., 713.06(2), and 713.23(1)(c), F.S.
[9] Section 713.06(2)(c), F.S.
[10] *Id.*

To protect against a lien by the lienor or having to pay twice for the same work, the notice to owner warns that to avoid a lien and paying twice, the owner must obtain a written release from the lienor every time they pay the contractor.[11]

A notice of commencement must be recorded for any contract greater than $2,500 in the county clerk's office before a contractor may begin an improvement to real property or recommences completion of any improvement after default or abandonment.[12] The notice shall provide:

- A description of the real property;
- A general description of the improvement;
- Name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than the owner;
- The name and address of the contractor;
- The name and address of the surety on the payment bond, if any, and the amount of the bond;
- The name and address of any person making a loan for the construction of the improvements; and
- The name and address of a designated person upon whom documents may be served if other than the owner.

Liens of materialmen or laborers who are in privity with the owner and who comply with the provisions of ch. 713, F.S., attach and take priority at the time the notice of commencement is recorded.

A notice of commencement is not required in direct contracts to repair or replace an existing heating or air-conditioning system in an amount less than $7,500.[13] This exemption was enacted by the Legislature in 1999 at the amount of $5,000[14] and subsequently increased to its current amount of $7,500 in 2006.[15]

In the event a notice of commencement is not filed, the liens attach and take priority at the time the claim of lien is recorded.[16] The owner of the improved property would be responsible for discharging all liens filed upon the property as outlined in s. 713.21, F.S.

III. Effect of Proposed Changes:

The bill amends s. 713.135, F.S to increase the threshold amount from $7,500 to $15,000 in direct contracts to repair or replace an existing heating or air-conditioning system in which a notice of commencement need not be filed.

[11] Section 713.06(2)(c), F.S.
[12] Section 713.13(1)(a), F.S.
[13] Section 713.135(1)(d), F.S.
[14] Chapter 99-386 L.O.F.
[15] Chapter 2006-187 L.O.F.
[16] Section 713.07, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional improvements will be exempt from notice of commencement filing requirements, thus providing cost savings to owners or contractors who would otherwise be required to pay the nominal fee to file such notice.

C. Government Sector Impact:

Clerks of court will likely process fewer notice of commencement filings, which will have an indeterminate but likely minimal effect on their revenues collected and their workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.135 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Hooper

16-00561-22 2022352__

A bill to be entitled

An act relating to construction liens; amending s. 713.135, F.S.; revising the threshold for determining whether certain direct contracts to repair or replace an existing heating or air-conditioning system are exempt from specified notice of commencement and applicability of lien requirements for authorities issuing building permits; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 713.135, Florida Statutes, is amended to read:

713.135 Notice of commencement and applicability of lien.—

(1) When any person applies for a building permit, the authority issuing such permit shall:

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13. If the direct contract is greater than $2,500, the applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such certified copy with the issuing authority. The certified copy of the notice of

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commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application. The issuing authority shall provide the recording information on the certified copy of the recorded notice of commencement to any person upon request. This subsection does not require the recording of a notice of commencement prior to the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a certified copy of a recorded notice of commencement or a notarized statement regarding a recorded notice of commencement. This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than $15,000 ~~$7,500~~.

Section 2. This act shall take effect July 1, 2022.

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 406
INTRODUCER:	Senator Berman
SUBJECT:	Secured Transactions
DATE:	October 26, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 406 provides that language referring only to the type of collateral is insufficient to waive constitutional and statutory protections that prevent creditors from obtaining a judgment against certain assets, allowing the individual to pledge such assets as collateral.

These changes are in response to a recent federal court case which held that mere contractual reference to "all assets" included certain property previously understood to be excluded from such an agreement. Assets unexpectedly put at risk include retirement accounts, pension payments, and education savings accounts.

The bill takes effect upon becoming a law, and applies retroactively to all security interests.

II. Present Situation:

Asset Protection from Legal Process

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, typically a debt when creditors are involved. The creditor may then use that judgment to collect assets from the debtor. Chapter 222, F.S., contains exemptions that protect certain assets from legal process under Florida law, absent a waiver. Florida exempts the following assets against creditor claims in most situations:

- Homestead property (ss. 222.01-222.05, F.S.).
- Certain items of personal property (s. 222.061, F.S.).
- Certain disposable earnings of head of family (s. 222.11, F.S.).
- The proceeds of a life insurance policy (s. 222.13, F.S.).
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract (s. 222.14, F.S.).
- Disability benefits payable from any insurance (s. 222.18, F.S.).

- Certain pension, retirement, or profit sharing benefits (s. 222.21, F.S.).
- Prepaid College Trust Fund moneys and Medical Savings Account funds (s. 222.22, F.S.).
- A debtor's interest in a motor vehicle, up to $1,000 in value (s. 222.25, F.S.).
- A debtor's interest in any professionally prescribed health aids (s. 222.25, F.S.).
- Social security benefits, unemployment compensation, or public assistance benefits; veterans' benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances (s. 222.201, F.S.).

These exemptions have historically been construed liberally in favor of the consumer against creditors' claims to exempt property.[1] When a consumer enters a security agreement – a contract in which a debtor offers assets as collateral ("security") to guarantee repayment – the contract describes what assets are offered as security. Historically, a contract's blanket offering of "all assets" as security has not been interpreted to include assets subject to these exemptions.[2]

An individual must take additional steps in order to offer certain exempt assets as collateral. For example, in the case of a Floridian's homestead exemption, which protects homestead property from bankruptcy proceedings, a contractual waiver of those rights must be "knowing, voluntary, and intelligent" to have any effect.[3] As another example, certain wages are exempt from legal process.[4] The wages exemption may only be waived in writing, in a separate document attached to the security agreement, which must contain mandatory waiver language in at least 14-point font.[5]

Sufficiency of Description for Collateral in Security Agreements

An effective description of collateral in a security agreement identifies the asset by specific listing; category; type of collateral; quantity, computational or allocational formula; or any method under which the identity of the collateral is objectively determinable.[6]

Current law specifically provides that a description of collateral as "all the debtor's assets" or "all the debtor's personal property" does not reasonably identify collateral.[7]

Finally, current law provides that a description defined by "type" of collateral alone for a commercial tort claim or, in a consumer transaction, for a security entitlement, securities account, or commodity account, is not sufficient.[8] For example, "all existing and after-acquired investment property" or "all existing and after-acquired security entitlements," without more,

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[1] *See e.g.* Patten Package Co. v. Houser, 102 Fla. 603, 607, 136 So. 353, 355 (1931); *Killian v. Lawson*, 387 So.2d 960, 962 (Fla. 1980); *Havoco of Am. Ltd. v. Hill*, 790 So.2d 1018, 1021 (Fla. 2001); *Connor v. Seaside National Bank*, 135 So.3d 508, 509 (Fla. 5th DCA 2014).
[2] Section 679.1081(3), F.S., Official Comment 2 to U.C.C. s. 9-110 (s. 679.1081(3), F.S.).
[3] *See e.g. Chames v. DeMayo*, 972 So.2d 850, 861 (Fla. 2007) (citing State v. Upton, 658 So.2d 86, 87 (Fla.1995)).
[4] Section 222.11, F.S.
[5] Section 222.11(2), F.S.
[6] Section 679.1081(2), F.S. Chapter 679, F.S., adopts Article 9 of the Universal Commercial Code (U.C.C.), dealing with secured transactions. Every state in the United States has adopted the U.C.C. *See* https://www.uniformlaws.org/acts/ucc (last visited Oct. 26, 2021).
[7] Section 679.1081(3), F.S.
[8] Section 679.1081(5), F.S.

would be insufficient in a consumer transaction to describe a security entitlement, securities account, or commodity account.[9]

Kearney Construction Co, LLC v. Travelers Casualty & Surety Company of America

A recent federal court case held that general, broad pledges of "all assets" waives ch. 222, F.S., protections.[10] In *Kearney Construction Company, LLC v. Travelers Casualty and Surety Company of America*[11] the debtor obtained a line of credit and pledged collateral in the contract as follows:

> Grant of Security Interest. As security for any and all Indebtedness (as defined below), the Pledgor hereby irrevocably and unconditionally grants a security interest in the collateral described in the following properties[:] all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles (the "Collateral").[12]

The Eleventh Circuit considered whether this language included assets held in the debtor's Individual Retirement Account (IRA). The debtor argued that the IRA should not have been included in all assets and was never intended to have been offered as collateral.[13] The court found that the security agreement's language constituted an "unambiguous pledge" of all assets, which includes those exempt under ch. 222, F.S.[14] Kearney's IRA was not specifically listed in the agreement, but the court concluded that the broad language of the contract "encompassed potential retirement accounts or funds, such as the [IRA] at issue here."[15]

The courts did not address whether ch. 222, F.S., exemptions or ch. 679, F.S., description requirements should have any weight in interpreting the contract. The courts also did not explain what part of the security agreement encompassed the IRA. It is unclear if it was part of a specific collateral category such as a deposit account, investment property, general intangible, or another category,[16] each of which could have different treatment.[17]

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[9] Section 679.1081(5), F.S.; Official Comment 5 to U.C.C. s. 9-108 (s. 679.1081(5), F.S.).
[10] These concerns were raised by the Florida Bar's Real Property, Probate, and Trust Law Section, which formed a "Kearney Subcommittee" within its Asset Protection Committee. *See* the Kearney Subcommittee's White Paper (Oct. 14, 2021) (on file with the Senate Committee on Community Affairs).
[11] 795 Fed.Appx. 671 (Fla. 11th Cir. Nov. 13, 2019).
[12] *Id.* at 673.
[13] *Id*.
[14] *Id.*
[15] Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 28.
[16] *Id.*
[17] Sections 679.1021, 679.1031, 679.1041, 679.1051, 679.1061, 679.1071, 679.1081 and 679.1091, F.S.

Federal law treats the use of any funds inside a tax-advantaged retirement account as a taxable distribution from that account.[18] Therefore, any such funds used unexpectedly for a pledge of "all assets" towards a debt risk losing their tax-advantaged status, subject to back taxes and penalties.

III. Effect of Proposed Changes:

Section 1 amends s. 679.1081(5), F.S., to provide that those accounts and entitlements described in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22, F.S., are not adequately described by general reference to the type of collateral. In order to include such an asset in a security agreement the asset must be described by specific reference to the individual asset as provided in s. 679.1081, F.S.

The assets referred to in those sections include life insurance policies, cash surrender value of life insurance policies and annuity contracts; wages or reemployment assistance or unemployment compensation payments due deceased employees; disability income benefits; certain payments protected by the federal Bankruptcy Reform Act of 1978; pension money and tax exempt retirement accounts; and assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts.

Section 2 provides that the bill applies retroactively to all security interests.

Section 3 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of s. 18, Art. VII of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of s. 19, Art. VII of the State Constitution do not apply.

[18] I.R.C. 408(e)(4).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed the bill to identify a fiscal impact.

B. Private Sector Impact:

The bill protects consumers from unknowingly pledging otherwise exempt assets.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 679.1081 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Berman

31-00385-22 2022406__

A bill to be entitled

An act relating to secured transactions; amending s. 679.1081, F.S.; providing that a description of certain accounts and entitlements by a certain type of collateral is insufficient for the purpose of security agreements; providing retroactive application; providing an effective date.

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

Section 1. Subsection (5) of section 679.1081, Florida Statutes, is amended to read:

679.1081 Sufficiency of description.—

(5) A description only by type of collateral defined in this chapter is an insufficient description of:

(a) A commercial tort claim;

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; ~~or~~

(c) An account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor's homestead under the laws of this state; or

(d) Accounts and other entitlements set forth in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

Section 2. The amendment made by this act to s. 679.1081, Florida Statutes, is remedial in nature and applies retroactively.

Section 3. This act shall take effect upon becoming a law.

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

WHITE PAPER

PROTECTION OF FLORIDA CONSUMERS FROM UNINTENTIONALLY ASSIGNING, PLEDGING, OR WAIVING RIGHTS TO ASSETS THAT OTHERWISE ARE EXEMPT FROM LEGAL PROCESS UNDER CHAPTER 222 OF THE FLORIDA STATUTES BY CLARIFYING THAT A DESCRIPTION OF COLLATERAL ONLY BY TYPE OF COLLATERAL IN A SECURITY AGREEMENT DOES NOT SUFFICIENTLY DESCRIBE SUCH EXEMPT ASSETS FOR PURPOSES OF PERFECTING A VALID SECURITY INTEREST UNDER FLORIDA'S UNIFORM COMMERCIAL CODE.

I. SUMMARY

This legislation protects Florida Consumers from unintentionally assigning, pledging, or waiving rights to, retirement accounts, annuities, certain life insurance policies, and certain other assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by clarifying that, under Florida's Uniform Commercial Code, a description of collateral only by type of collateral does not sufficiently describe those exempt assets for purposes of perfecting a valid security interest. If the proposed bill is enacted, a collateral definition containing general types of collateral would not include those assets exempt from legal process under Chapter 222 of the Florida Statutes, unless those assets are specifically identified as collateral in the security agreement. The bill is remedial in nature and applies retroactively. Because of the adverse economic impact of Covid-19, it is imperative to protect citizens from unknowing forfeiture of assets and potentially disastrous tax consequences. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

A. Current Florida Statutes

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. Florida Statutes § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in individual retirement accounts ("**IRAs**"), 401(k) retirement accounts, and other tax-exempt accounts. Florida Statutes § 222.14 provides that the cash surrender values of life insurance policies and the proceeds of annuity contracts issued to citizens or residents of the State of Florida are exempt from creditor attachment. Florida Statutes § 222.22 states that funds held in qualified tuition programs and other qualifying accounts are also protected from creditors. This summary of the Chapter 222 exemptions excludes from its discussion those statutory exemptions set forth in Fla. Stat. §§ 222.13, 222.15, 222.16, 222.18, 222.201, and 222.21. It should be noted the assets and entitlements set forth in those sections are also exempt from creditors.

[Under Fla. Stat. § 222.11, wages are exempt from attachment or garnishment unless the Florida Consumer agrees to waive the protection from wage garnishment in a writing complying with the requirements set forth in Fla. Stat. § 222.11(2)(b). Florida Statutes § 222.11(2)(b) provides that the agreement to waive the protection from wage garnishment must be in writing and be written in the same language as the contract to which the waiver relates, be contained in a separate

document attached to the contract, and contain the mandatory waiver language specified in Fla. Stat. § 222.11(2)(b) in at least 14-point type. This writing ensures the Consumer understands they are waiving a statutory exemption.][1]

It has been standard result for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged. Long standing public policy of the Florida legislature promotes the financial independence of the retired and elderly by protecting their IRAs and pensions plans with an exemption, thus reducing the need for public financial assistance. This consumer protection built into the framework of the existing law protecting Florida Consumers from overreaching creditors, unfair transactions, and retirement poverty was cast aside in the decision of *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671 (11th Cir. 2019). The *Kearney* result flies in the face of the intent of the Florida legislature and the current statutory framework which requires that a description of collateral reasonably identifies the collateral secured by a security agreement. Under Florida's Uniform Commercial Code, a description of collateral as "all of the debtor's assets" does not reasonably identify the collateral for purposes of a security agreement. The *Kearney* result is troubling because the court determined that a general description of types of collateral included certain assets exempt under Chapter 222 of the Florida Statutes. Florida Consumers who have signed security agreements now face the grave but real threat of unknowingly putting their exempt assets at risk for forfeiture.

B. Kearney Holding

On October 27, 2011, the United States District Court Middle District of Florida, Tampa Division granted a motion for entry of final judgment in favor of Travelers Casualty & Surety Company of America and against Bing Charles W. Kearney ("**Kearney**") and others in the amount of $3,750,000. Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 711, at 1-2 (March 17, 2016). On March 1, 2012, Kearney executed a Revolving Line of Credit Promissory Note (the "**Promissory Note**") in favor of Moose Investments of Tampa, LLC ("**Moose Investments**"), which was an entity owned by Kearney's son. Magistrate Judge's Report and Recommendation, Case 8:09-cv-01850-JSM-TBM, Docket 865, at 9 (August 16, 2017). The Promissory Note was collateralized by a security agreement (the "**Security Agreement**"), in which Kearney pledged a security interest in

> **all assets and rights of the Pledgor,** wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all good (including inventory, equipment and any accessories thereto), instruments (including promissory notes), documents, accounts, chattel paper, **deposit accounts**, letters of credit, rights, securities and all other **investment property**, supporting obligation, any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and **general intangibles** (the "Collateral"). *Id.* at 9-10 (emphasis added).

On October 25, 2012, Kearney deposited funds into an IRA at USAmeriBank. *Id.* at 10. On July 23, 2015, the Magistrate Judge granted Travelers' motion for a writ of garnishment directed to

[1] Since we aren't using the new statute dealing with waivers, should we remove this reference?

USAmeriBank. Magistrate Judge's Report and Recommendation, Docket 711, at 2.

Magistrate Judge McCoun III submitted a Report and Recommendation on March 17, 2016 (Docket 711) and a Report and Recommendation on August 16, 2017 (Docket 865) addressing the numerous summary judgment motions related to the writ of garnishment directed to USAmeriBank. In the Report and Recommendation submitted on August 16, 2017, Magistrate Judge McCoun III issued a recommendation on three summary judgment motions related to determining whether the funds deposited into Kearney's IRA at USAmeriBank lost the exempt status because of Kearney's pledge of collateral in the Security Agreement with Moose Investments. Docket 865, at 7. Kearney argued the funds held in his IRA were exempt from garnishment under Fla. Stat. § 221.21(2). *Id.* at 8. Travelers countered that Kearney pledged the IRA as security to Moose Investments pursuant to the Promissory Note and Security Agreement, and such pledge of the IRA as collateral caused the funds in the IRA to both lose its tax-exempt status and its exempt status from garnishment. *Id.* at 8-9. Kearney responded that the Promissory Note and Security Agreement did not specify the IRA was intended to be pledged as a "deposit account" as part of the collateral under the Security Agreement. *Id.* at 22- 23.

The Magistrate Judge determined that Kearney pledged all of his assets and rights in the Security Agreement securing the Promissory Note. *Id.* at 22. Thus, the funds held in Kearney's IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.* at 29. In arriving at this conclusion, the Magistrate Judge determined the language of the Security Agreement was "clear, unambiguous, and without exception." *Id.* at 26. Although Kearney's IRA was not specifically identified as part of the collateral, the Magistrate Judge noted that the broad language of the Security Agreement "encompassed potential retirement accounts or funds, such as the [IRA] at issue here." *Id.* at 28. The Magistrate Judge did not identify the collateral category in the Security Agreement that purportedly covered the IRA. The Magistrate Judge did not explain whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. Furthermore, the Magistrate Judge did not reference Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral for purposes of the security agreement. The Magistrate Judge did not cite any Florida case law or the Florida Statutes in support of the Magistrate Judge's position that a pledge of IRA funds causes such funds to lose their creditor exempt status in Florida. In fact, the Magistrate Judge only cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion. *Id.* at 21-22 (citing *In re Roberts*, 326 B.R. 424, 426 (Bankr. S.D. Ohio 2004), and *XL Specialty Ins. Co. v. Truland*, 2015 WL 2195181, at *11–13 (E.D. Va., May 11, 2015)).

The United States District Court Middle District of Florida, Tampa Division adopted, confirmed, and approved in all respects the Reports and Recommendations submitted by Magistrate Judge McCoun III in Docket 711 and Docket 865. *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2016 WL 1394372 at *1; *Kearney Construction Company, LLC v. Travelers Casualty & Surety Company of America*, 2017 WL 4244390 at *1. In 2019, the United States Court of Appeals for the Eleventh Circuit reexamined whether Kearney pledged his IRA as collateral under the Security Agreement. *Kearney Constr. Co., LLC v. Travelers Cas. & Sur. Co. of Am.*, 795 Fed. Appx. 671, 673 (11th Cir. 2019). The

Eleventh Circuit agreed with the United States District Court Middle District of Florida, Tampa Division, and determined the language in the Security Agreement "constitutes an unambiguous pledge of 'all assets and rights of the Pledgor,' including his IRA Account . . . ." *Id.* at 674. The Eleventh Circuit concluded the District Court properly held the IRA was pledged as security for Kearney's loan with Moose Investments and "therefore was not exempt under § 222.21." *Id.* at 675. As with the Magistrate Judge, the Eleventh Circuit did not identify the collateral category in the Security Agreement that purportedly covered the IRA and did not reference how Fla. Stat. § 679.1081(3) provides that a general description of collateral is legally inadequate to create a valid lien.

The Eleventh Circuit rejected Kearney's argument that the IRA was protected by Fla. Stat. §§ 222.21(2)(a)(1) and (2) even if it was determined that the IRA was pledged under the Security Agreement. *Id.* at 674, n.7. The Eleventh Circuit asserted Fla. Stat. § 222.21(2)(a)(1) could apply only if the Internal Revenue Service ("**IRS**") "pre-approved" the IRA as exempt from taxation. *Id.* The Eleventh Circuit also stated Fla. Stat. § 222.21(2)(a)(2) applied only if the IRS "determined" an IRA is exempt from taxation. *Id.* The Eleventh Circuit concluded Kearney provided no evidence the IRS "pre-approved" Kearney's IRA as exempt from taxation, or that the IRS made a "determination" that Kearney's IRA was exempt from taxation. *Id.* Since Kearney had the burden of proving such "pre-approval" or "determination," the Eleventh Circuit concluded the funds held in Kearney's IRA lost their tax-exempt status and were not protected by Fla. Stat. § 221.21(2) or any other statutory exemption. *Id.*

[Although there is a procedure for obtaining a determination letter from the IRS for a qualified plan, employers who sponsor retirement plans are generally not required to apply for a determination letter from the IRS. Furthermore, effective January 1, 2017, Revenue Procedure 2016-37 provides the limited circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. Thus, the custodians of IRAs rarely seek determination of tax-exempt status from the IRS. Furthermore, it is both absurd and impossible to require all Florida Consumers owning IRAs to obtain the IRS's approval regarding the status of their IRAs as exempt in order to be protected by Florida's statutory exemption.][2]

C. Issues Resulting from Kearney Holding

Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. The Magistrate Judge, the District Court, and the Eleventh Circuit concluded that Kearney forfeited the exempt status of the funds held in the IRA by pledging the funds as collateral because the Security Agreement provided Kearney pledged all of his "assets and rights." In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081, which is part of Florida's Uniform Commercial Code. Florida Statutes § 679.1081 sets forth the requirements for the description of collateral in order to perfect a valid security interest in an asset. Specifically, Fla. Stat. § 679.1081(3) currently states that "[a] description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import

[2] Due to the revised plan for the bill, do you think this discussion can be omitted. It doesn't address the key concern of having a sufficient description of the collateral.

does not reasonably identify the collateral for purposes of the security agreement" and, therefore, would not create a valid security interest. It has been standard practice for any asset which is exempt under Chapter 222 of the Florida Statutes to remain exempt from the reach of creditors, if the exempt asset is not specifically pledged in the security agreement. The Security Agreement in *Kearney* did not specifically identify the IRA as part of the collateral. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. Under Fla. Stat. § 679.1081(3), the broadly worded collateral definition in *Kearney* did not sufficiently identify the IRA for purposes of creating a valid security interest in the IRA.

The three courts did not cite any Florida case law or relevant statute in the Florida Statutes to support the conclusion that Kearney waived his exemption from creditors for funds held in the IRA by signing the Security Agreement containing a broadly worded security interest provision. The Magistrate Judge cited cases from the United States Bankruptcy Court for the Southern District of Ohio and the Eastern District Court of Virginia to support the conclusion that a pledge of IRA funds caused such funds to lose their creditor exempt status. However, those cases were not decided under Florida law, are not binding on a Florida court, and rest in jurisdictions that do not necessarily have state law creditor exemptions similar to Florida for IRAs.

The Eleventh Circuit, in the *Kearney* decision, without citing any Florida case law or the Florida Statutes supporting its conclusion:

- blind-sides millions of Florida Consumers by rendering moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment property;
- causes citizens to unintentionally remove the exempt protection they have from their IRAs and qualified retirement plans which may cause them to become so destitute they must become wards of the state;
- creates a toxic environment for business because all business loans requiring a general pledge of assets would force business owners to give their creditors total access to their retirement savings, children's college funds and life insurance cash surrender values; and
- potentially triggers a ruinous immediate financial result for Florida Consumers by causing the loss of the pledged amount of a Florida Consumer's IRAs and qualified retirement plans, plus up to 40% of the full value to taxes and penalties upon making a general pledge of assets.

1. Forfeiture of Exempt Status for Pledged Assets: Chapter 222 of the Florida Statutes contains most of the statutory exemptions that protect certain assets from legal process under Florida law. For example, Fla. Stat. § 222.21(2)(a) allows Florida Consumers to claim an exemption from creditors for funds held in IRAs, 401(k) retirement accounts, and other tax-exempt accounts. Florida Consumers have long operated under the belief any asset which is exempt under Chapter 222 of the Florida Statutes is exempt from the reach of creditors unless such exempt asset is specifically pledged in a security agreement. The Magistrate Judge, the District Court, and the Eleventh Circuit cast aside this widely held belief in concluding that Kearney forfeited the exempt

status of the funds held in the IRA because the Security Agreement provided Kearney pledged all of his "assets and rights" as collateral, including the IRA. In arriving at this conclusion, the three courts ignored Fla. Stat. § 679.1081(3), which provides that a description of collateral as "all the debtor's assets" does not reasonably identify the collateral for purposes of perfecting a valid security interest in the security agreement. Such a general description of collateral is legally inadequate to create a valid lien. Furthermore, the Security Agreement at issue in *Kearney* did not specifically identify Kearney's IRA as part of the collateral. The three courts did not identify the collateral category in the Security Agreement that purportedly covered the IRA, and never explained whether the IRA was a "deposit account," "investment property," a "general intangible," or something else. Assets exempt from creditors under Chapter 222 of the Florida Statutes should not lose their exempt status due to a collateral definition containing a list of broadly worded types of assets.

A long standing public policy of the Florida legislature is the promotion of the financial independence of the retired and elderly through the protection of their IRAs and pensions plans with an exemption, thus reducing the need for public financial assistance. However, the *Kearney* decision may result in Florida Consumers unintentionally removing the exempt protection they have from their IRAs and qualified retirement plans, which could then cause them to become so destitute they must become wards of the state.

2. Application of *Kearney* Decision Beyond IRAs: The *Kearney* decision creates a dangerous precedent by permitting funds held in an IRA or other qualified plans to be garnished by creditors without a Florida Consumer making an express and knowing waiver of the Fla. Stat. § 222.21(2)(a) exemption. The holding in *Kearney* appears to be in contravention with the intent of the Florida legislature to protect the assets of IRAs and pension plans from creditors. *See Dunn v. Doskocz*, 590 So. 2d 521, 522, n.2 (Fla. Dist. Ct. App. 1991) ("It appears the legislature has made the policy decision that it should protect the assets of IRA's and pension plans, thereby promoting the financial independence of IRA and pension plan beneficiaries in their retirement years—in turn reducing the incidence and amount of requests for public financial assistance"). The ripple effects of the *Kearney* decision go beyond the loss of the statutory exemption for funds held in IRAs or other qualified retirement plans. In *Kearney*, the Eleventh Circuit only examined whether Kearney waived the statutory exemption for his IRA. However, the *Kearney* holding is not necessarily limited to the waiver of the statutory exemption for IRAs. The *Kearney* decision can be used by creditors to pursue other purportedly exempt assets. *Kearney* potentially renders moot numerous statutory exemptions from creditors under Florida law for anyone who has signed a contract containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property. For example, funds in other tax-exempt accounts protected under Fla. Stat. § 222.21(2)(a), such as 401(k) retirement accounts, are potentially vulnerable to creditors. Since the Eleventh Circuit did not identify which collateral category in the Security Agreement covered the IRA in *Kearney*, it is not unreasonable to believe that the cash surrender values of life insurance policies and the proceeds of annuity contracts protected under Fla. Stat. § 222.14 could be classified as "deposit accounts" or "investment property" in a different security agreement, and thus, potentially accessible to creditors. A similar analysis applies to other assets exempt under Chapter 222.

3. Creates a toxic environment for new business: Mortgages, credit card applications, home equity line of credit agreements, security agreements, financing statements, and personal guarantees on business loans are only a few examples of documents that typically include a general pledge of assets as collateral similar to the provision at issue in *Kearney*. Millions of Florida Consumers are parties to at least one (if not more) of these contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. The *Kearney* holding creates a toxic environment for business because almost all business loans require a general pledge of assets, which forces business owners to unknowingly give their creditors total access to their retirement savings, children's college funds, life insurance cash surrender values, and coin collections as collateral.

4. Triggers early distribution taxes and penalties of up to 40%: The tax result of the *Kearney* decision makes it even worse. Under federal law, if an IRA owner uses the account or any portion of such account as security for a loan, the portion used as security is deemed distributed to the owner. IRC § 408(e)(4). The IRA owner is required to include any amount paid or distributed out of the IRA in gross income and to pay federal income taxes on such gross income. IRC § 408(d)(1). The same adverse federal income tax results will occur if a Florida Consumer pledges an interest in a qualified employer plan. Pursuant to § 72(p)(1)(B) of the Code, if a Florida Consumer "pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan." IRC § 72(p)(1)(B). A loan from a qualified employer plan is treated as being received as a deemed distribution for purposes of § 72. IRC § 72(p)(1). Additionally, the Code imposes penalties depending on when the deemed distribution from an IRA or qualified employer plan is made. Like an actual distribution, a deemed distribution is subject to the 10% additional tax on certain early distributions under § 72(t). Treas. Reg. § 1.72(p)-1, Q&A 11(b). For example, if a Florida Consumer is under the age of 59 ½ and not disabled, the deemed distribution under § 408(e)(4) is also subject to the 10% penalty tax under § 72(t). IRC § 72(t).

The *Kearney* holding generates a calamitous financial result for Florida Consumers. If a Florida Consumer signs a document containing a broadly worded security interest provision that includes a general reference to deposit accounts, general intangibles, and/or investment property, that individual, under *Kearney*, has arguably pledged the entirety of all such funds owned in an IRA, as well as their other exempt assets, such as cash surrender values of life insurance policies and the proceeds of annuity contracts. If a Florida Consumer pledges an IRA, potentially the entirety of the pledged funds held in the IRA will be treated as a loan to such Consumer and thus taxable as a deemed distribution. If a creditor can garnish the funds held in an IRA, the debtor Consumer would, in addition to losing the pledged funds, be required to pay federal income taxes on all of the funds along with possibly the additional tax penalty for making an early distribution of the IRA!

D. Legislative Fix Needed

The Eleventh Circuit, without citing any Florida case law supporting its conclusion, potentially rendered moot numerous statutory exemptions from creditors contained in Chapter 222 of the Florida Statutes for any Florida Consumer who has signed any contract containing a blanket security interest provision that includes deposit accounts, general intangibles, and/or investment

property. In light of the serious issues resulting from the *Kearney* holding, Chapter 222 requires a legislative fix. In the absence of legislative action, a Florida Consumer, by signing a document containing a broadly worded security interest provision, unknowingly places their IRA, pension plan, annuity or life insurance contract at risk of forfeiture and confiscatory taxation. Because of the protection afforded to the ownership of homestead property under Article X Section 4 of the Florida Constitution as well as the Florida Supreme Court's holding in *Havoco of America, Ltd. V. Hill*, 790 So. 2d 1018 (Fla. 2001) and its progeny, no change is necessary with respect to the exemption related to homestead property. The wage garnishment exemption set forth in Fla. Stat. § 222.11(2)(b) provides sufficient guidelines for a Florida Consumer to knowingly waive protection from wage garnishment. The proposed legislative change described in Section III below therefore is not intended to apply to, or alter the existing protections afforded to, homestead property or the wage garnishment exemption in any manner.

III. EFFECT OF PROPOSED CHANGES

Florida Statutes § 679.1081(5)

Current Situation: Florida Statutes § 679.1081 is part of Florida's Uniform Commercial Code. Florida Statutes § 679.1081 sets forth the requirements for the description of collateral in order to perfect a valid security interest in an asset. Specifically, Fla. Stat. § 679.1081(3) currently states that "[a] description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral for purposes of the security agreement" and, therefore, would not create a valid security interest. Florida Statutes § 679.1081(5) currently provides that "[a] description only by type of collateral defined in this chapter is an insufficient description of: (a) [a] commercial tort claim; (b) [i]n a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; or (c) [a]n account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor's homestead under the laws of this state." Under current Florida law, it is unclear whether a collateral definition referencing types of collateral in a security agreement is a sufficient description of those assets that are exempt from creditors under Chapter 222 of the Florida Statutes for purposes of perfecting a valid security interest in those assets.

Effect of Proposed Changes: The Committee proposes the insertion of a new subsection (d) to Fla. Stat. § 679.1081(5) to reference certain assets and entitlements that are exempt from creditors under Chapter 222 of the Florida Statutes. The proposed Fla. Stat. § 679.1081(5)(d) clarifies that, under Florida's Uniform Commercial Code, a description only by type of collateral does not sufficiently describe those certain accounts and other entitlements exempt from legal process under Chapter 222 of the Florida Statutes, including proceeds from an annuity or life insurance contract (Fla. Stats. §§ 222.13 and 222.14), benefits under unemployment compensation (Fla. Stats. §§ 222.15 and 222.16), disability insurance (Fla. Stat. § 222.18), those properties protected under the federal bankruptcy exemptions (Fla. Stat. § 222.201), funds held in an IRA or other qualified retirement accounts (Fla. Stat. § 222.21), and funds held in qualified tuition programs and other qualified accounts (Fla. Stat. § 222.22). To perfect a valid security interest in any of the aforementioned exempt assets and entitlements, the security agreement must specifically identify those assets as collateral, such as in a manner consistent with Fla. Stat. § 679.1081. If no such identification is done, then those assets would remain exempt under Florida law. The

proposed legislation protects Florida Consumers from unintentionally assigning, pledging, or waiving rights to, assets that are exempt under Chapter 222 of the Florida Statutes. The bill is remedial in nature and applies retroactively.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Millions of Florida Consumers are parties to at least one (if not more) contracts secured by their assets, which may now, unbeknownst to them, include a pledge of their exempt assets. Today, especially given the devastating economic hardships caused by Covid-19, citizens of the state of Florida have but few assets which they can rely upon for a modicum of financial security. The *Kearney* decision unknowingly places a Florida Consumer's IRA, pension plan, annuity, or life insurance contract at risk of forfeiture and confiscatory taxation. For example, if a Florida Consumer pledges the funds held in an IRA, the portion used as security is deemed distributed to such Consumer. The Consumer must pay federal income taxes on this deemed distribution. The Consumer may also be required to pay a 10% additional tax for making an early distribution of the IRA.

The proposed Fla. Stat. § 679.1081(5)(d) protects Florida Consumers by clarifying that, under Florida's Uniform Commercial Code, a description only by type of collateral does not sufficiently describe those certain accounts and other entitlements exempt from legal process under Chapter 222 of the Florida Statutes. To perfect a valid security interest in any of the aforementioned assets and entitlements, the security agreement must specifically identify those assets as collateral in the security agreement, such as in a manner consistent with Fla. Stat. § 679.1081. The proposed legislation protects Florida Consumers from unintentionally assigning, pledging, or waiving rights to, assets that are exempt under Chapter 222 of the Florida Statutes. Furthermore, the proposed legislation saves Florida Consumers from unknowingly losing the pledged funds and incurring federal income taxes on the total balance of the pledged funds.

VI. CONSTITUTIONAL ISSUES

There are no constitutional issues that may arise as a result of the proposal.

VII. OTHER INTERESTED PARTIES

Tax Section of The Florida Bar
Name:
Contact Information:
Support, Oppose or No Position: Support pending finalization of language

Business Law Section of The Florida Bar
Name:
Contact Information:

Support, Oppose or No Position: Support pending finalization of language

Florida Bankers Association
Name:
Contact Information:
Support, Oppose or No Position: Pending

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture
Appropriations Subcommittee on Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY
29th District

October 27, 2021

Chair Jennifer Bradley
Committee on Community Affairs
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bradley:

I am writing to you to be excused from the Committee on Community Affairs meeting that will be held on Wednesday, November 3 at 8:30 a.m. I sincerely apologize for any inconvenience this may cause.

Thank you for your consideration. Please feel free to contact me at (850) 487-5029 if you have any questions.

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 29

cc: Elizabeth Ryon, Staff Director
Shirlyne Everette , Administrative Assistant
Michele Grimes, Administrative Assistant

REPLY TO:
❒ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
❒ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

Community Affairs
Committee

SB 406
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Phone 850-205-9000

Address 119 South Monroe Street #200
Street

Email adl@mhdfirm.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: [redacted] Business Law Section of the Florida Bar

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

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

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

Community Affairs
Committee

406
Bill Number or Topic

Amendment Barcode (if applicable)

Name Martha Edenfield

Phone 850-999-4100

Address 106 E. College Ave #1200
Street

Email medenfield@deanmead.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
The Real Property, Probate and Trust Law Section of the Florida Bar

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/03/2021
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Andrew Kalel

Phone 8132407632

Address 113 East College Ave
Street

Email akalel@scgroup.us

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Hernando County Government

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

Community Affairs
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Susan Harbin

Phone 770-546-8845

Address American Cancer Society Cancer Action Network
Street

Email susan.harbin@cancer.org

City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
American Cancer Society
Cancer Action Network

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

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

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/03/21
Meeting Date

SB224
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Regulation of Smoking in Public Places

Name Tara Taggart

Job Title Legislative Advocate

Address 301 S. Bronough St. #300
Street

Phone (850) 701-3603

Tallahassee FL 32301
City *State* *Zip*

Email ttaggart@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

CA.
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jared Rosenstein

Phone 786-247-8716

Address 124 W. Jefferson ST
Street

Email Jared@CCCFLA.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
City of Fort Lauderdale.

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/2021
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Lewis

Phone 941 954 9532

Address 1060 Ringling
Street

Email rlewis@scgov.net

Sarasota FL 34236
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Sarasota County Government

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

CA
Committee

224
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 9830 ELM ST.
Street

Email cullenasea@gmail.com

OCEAN CITY MD 21842
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
SIERRA CLUB FLORIDA

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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11/03/2021
Meeting Date

Community Affairs
Committee

SB224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mary K. Winn

Phone (850) 766-2612

Address 1006 Brookwood Drive
Street

Email kathywinnclan@embarqmail.com

Tallahassee, FL 32308
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/21
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Brita "Breeta" Lincoln

Phone 813 541-6256

Address 1747 Orlando Central Pkwy
Street

Email bwilkinslincoln@gmail.com

Orlando FL 32809
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

11/3/21
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Scala

Phone (850) 487-0697

Address 100 S Monroe Street
Street

Email jscala@fl-counties.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Association of Counties

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

Nov. 3. 2021
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Zayne Smith

Phone 850.228.4243

Address 215 S. Monroe St. Suite 603
Street

Email zsmith@aarp.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
AARP

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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11/3/2021
Meeting Date

Community Affairs
Committee

SB 0224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Natalie Fausel

Phone 561-317-0889

Address 201 West Park Ave. Ste 100
Street

Email natalie@anfieldflorida.com

Tallahassee FL 32308
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Broward County

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

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

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S-001 (08/10/2021)

DUPLICATE

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

11/3/2012
Meeting Date

Community Affairs
Committee

SB224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ashley Lyerly

Phone 205-968-2266

Address P.O. Box 43263
Street

Email ashley.lyerly@lung.org

Vestavia | AL | 35243
City | *State* | *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
American Lung Association

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

11/3/2021
Meeting Date

Community Affairs
Committee

SB 224
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mark Ryan, City Mgr. Phone 321 773-3181

Address 2055 South Patrick Dr. Email MRyan@indianharbour.org
Street

Indian Harbar Beach FL 32937
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

W

11/3/21
Meeting Date

Comm. Affairs
Committee

352
Bill Number or Topic

Amendment Barcode (if applicable)

Name Edward Briggs

Phone 850-933-5994

Address 235 E. Brandon Blvd. Ste. 640
Street

Email edward@rsaconsultingllc.com

Brandon FL 33511
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Cotney Construction Law

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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11/3/2021
Meeting Date

COMMUNITY AFFAIRS
Committee

SB 228
Bill Number or Topic

Amendment Barcode (if applicable)

Name SLATER BAILISS

Phone 850 227 8900

Address 204 S. MONROE ST
Street

Email

TALLAHASSEE FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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W

Nov. 3. 2021
Meeting Date

Community Affairs
Committee

SB 228
Bill Number or Topic

Amendment Barcode (if applicable)

Name Zayne Smith

Phone 850.228.4243

Address 215 S. Monroe St. Suite 603
Street

Email zsmith@aarp.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
AARP

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

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S-001 (08/10/2021)

Speaker

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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11/3/21
Meeting Date

Comm. Affairs
Committee

228
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony DiMarco

Phone 561 224-2265

Address 1001 Thomasville Rd
Street

Email adimarco@floridabankers.com

Tallahassee FL 32303
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: FL Bankers Assoc

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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11/3/2021
Meeting Date

Community Affairs
Committee

SB 196
Bill Number or Topic

Amendment Barcode (if applicable)

Name Trey Price

Phone (850) 488-4197

Address 227 N Bronough Street, Ste 5000
Street

Email katie.norman@floridahousing.org

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Housing Finance Corporation

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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November 3, 2021
Meeting Date

Senate Community Affairs
Committee

SB 196
Bill Number or Topic

Amendment Barcode (if applicable)

Name J. Larry Williams

Phone 850.510.5306

Address 215 S. Monroe Street, Suite 601
Street

Email lwilliams@gunster.com

Tallahassee FL 32301
City *State* *Zip*

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Coalition of Affordable Housing Providers

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

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

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Nov 3 2021
Meeting Date

Community Affairs
Committee

SB 196
Bill Number or Topic

Amendment Barcode (if applicable)

Name Larry Sellers

Phone 850 425 5670

Address 315 S Calhoun St
Street

Email larry.sellers@hklaw.com

Tallahassee FL 32301
City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Southport Development Services

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

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

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S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 37 **Case No.:** **Type:**
Caption: Community Affairs Committee **Judge:**

Started: 11/3/2021 8:30:24 AM
Ends: 11/3/2021 9:18:59 AM **Length: 00:48:36**

8:30:23 AM The meeting has come to order
8:30:28 AM Roll Call
8:30:31 AM Quorum present
8:30:49 AM Pledge Allegiance
8:31:16 AM Tab 1 SB 196 Senator Rodriguez
8:31:41 AM Senator Rodriguez explains bill
8:32:29 AM Questions
8:32:30 AM Senator Cruz with question
8:32:43 AM Senator Rodriguez responds
8:32:57 AM Senator Cruz follow up
8:33:03 AM Senator Rodriguez responds
8:33:15 AM Appearance forms
8:33:20 AM J. Larry Williams of Coalition of Affordable Housing Providers waiving in support
8:33:32 AM Larry Sellers of Southport Development Services waiving in support
8:33:40 AM Trey Price of Florida Housing Finance Corporation speaking in support
8:34:32 AM Debate?
8:34:35 AM Senator Rodriguez closes on bill SB 196
8:34:41 AM Roll call on SB 196
8:34:57 AM Reported favorable
8:35:07 AM Tab 3 SB 228 Senator Rodriguiez
8:35:23 AM Senator Rodriguez explains bill
8:35:48 AM Questions on the bill
8:35:54 AM Senator Hooper with questions
8:36:05 AM Senator Rodriguez responds
8:36:22 AM Senator Cruz with question
8:36:40 AM Senator Rodriguez responds
8:37:41 AM Senator Cruz follow up question
8:38:18 AM Senator Farmer with question
8:39:46 AM Senator Rodriguez responds
8:40:54 AM Senator Farmer with follow up
8:41:08 AM Senator Rodriguez responds to follow up
8:42:20 AM Appearance forms
8:43:20 AM Anthony DiMarco with FL Bankers Association speaking against bill SB 228
8:45:20 AM Senator Cruz with question to Anthony DiMarco
8:45:58 AM Anthony DiMarco responds to Senator Cruz
8:46:39 AM Senator Cruz with follow up
8:47:13 AM Anthony DiMarco responds
8:48:06 AM Senator Cruz with follow up
8:49:06 AM Anthony DiMarco responds to follow up
8:50:03 AM Senator Cruz with final question
8:51:03 AM Anthony DiMarco responds to final question
8:52:23 AM Zanye Smith with AARP waiving against
8:52:33 AM Slater Bayliss of Tallahassee, Florida waives in support
8:52:41 AM Debate?
8:52:43 AM Senator Baxley with debate
8:54:53 AM Senator Cruz with debate
8:55:15 AM Senator Hooper with debate
8:57:18 AM Senator Farmer with debate
9:00:29 AM Senator Rodriguez closes on SB 228
9:01:30 AM Roll call on SB 228
9:02:00 AM SB 228 is reported favorably
9:02:13 AM SB 224 by Senator Gruters

9:03:52 AM Questions
9:03:56 AM Senator Cruz with question
9:04:09 AM Senator Gruters responds to question
9:05:04 AM Senator Cruz with follow up
9:05:18 AM Senator Gruters responds to follow up
9:05:59 AM Senator Cruz with follow up
9:07:10 AM Appearance forms
9:07:31 AM Mark Ryan, City Manager speaking in favor
9:08:49 AM Ashley Lyerly with American Lung Association waiving in support
9:08:50 AM Natalie Fausel with Broward County waiving in support
9:08:56 AM Zayne Smith with AARP waives in support
9:09:00 AM Jeff Scala with Florida Association of Counties waives in support
9:09:03 AM Brita Lincoln of Orlando, Florida waiving in support
9:09:16 AM Mary Winn of Tallahassee, Florida waives in support
9:09:21 AM David Cullen with Sierra Club Florida waives in support
9:09:25 AM Robert Lewis with Sarasota County Government waives in support
9:09:33 AM Jason Rosenstein City of Ft. Lauderdale waives in support
9:09:36 AM Tara Taggart with Florida League of Cities waives in support
9:09:42 AM Susan Harbin with American Cancer Society waives in support
9:09:51 AM Andrew Kalel of Hernando County Government waives in support
9:10:09 AM Debate?
9:10:14 AM Senator Baxley with debate
9:10:44 AM Senator Hooper with debate
9:10:49 AM Senator Farmer with debate
9:11:50 AM Chair Bradley with debate
9:12:30 AM Senator Gruters closes on bill
9:12:51 AM Roll call on SB 224
9:13:14 AM SB 224 is reported favorably
9:13:28 AM Tab 5 SB 406 Senator Berman
9:13:46 AM Senator Berman Explains bill
9:13:59 AM Questions on bill
9:14:45 AM Appearance forms
9:14:49 AM Martha Edenfield with The Real Property, Probate and Trust Law Section of the Florida Bar waiving in support
9:14:59 AM Amee Diaz Lyon with Business Law Section of the Florida Bar waives in support
9:15:07 AM Debate? None
9:15:10 AM Senator Berman waives close
9:15:12 AM Roll call on SB 406
9:15:22 AM SB 406 is reported favorably
9:15:38 AM Tab 4 SB 352 by Senator Hooper
9:15:44 AM Senator Hooper explains bill
9:16:06 AM Questions on bill
9:17:06 AM Senator Cruz with question
9:17:16 AM Senator Hooper responds
9:17:36 AM Appearance forms
9:17:40 AM Edward Briggs with Cotney Construction Law waives in support
9:17:49 AM Debate? None
9:17:50 AM Senator Hooper waives close
9:17:55 AM Roll call on SB 352
9:18:07 AM SB 352 is reported favorably
9:18:16 AM Senators who wish to be recorded
9:18:23 AM Senator Brodeur on Tab 1
9:18:34 AM Senator Farmer on Tab 1
9:18:44 AM Senator Garcia moves to adjourn
9:18:48 AM Meeting is adjourned