Tab 1	**CS/SB 4** by **JU, Rodriguez;** Similar to H 06509 Relief of Patricia Ermini by the Lee County Sheriff's Office
Tab 2	**SB 24** by **DiCeglie;** Identical to H 06503 Relief of Mande Penney-Lemmon by Sarasota County
Tab 3	**SB 30** by **Martin;** Similar to CS/H 06533 Relief of the Estate of M.N. by the Broward County Sheriff's Office
Tab 4	**SB 96** by **Bernard;** Identical to H 06521 Relief of Jacob Rodgers by the City of Gainesville
Tab 5	**CS/SB 140** by **ED, Gaetz;** Similar to CS/H 00123 Charter Schools
Tab 6	**SB 202** by **Jones;** Similar to H 00011 Municipal Water and Sewer Utility Rates
Tab 7	**SB 658** by **Truenow;** Compare to H 00893 Waiver or Release of Liens
Tab 8	**SB 712** by **Grall;** Similar to CS/H 00683 Construction Regulations

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270282  D       S                       CA, Grall               Delete everything after  03/28 03:48 PM
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Tab 9	**SB 952** by **Ingoglia (CO-INTRODUCERS) Yarborough;** Identical to H 06025 Restrictions on Firearms and Ammunition During Emergencies
Tab 10	**SB 954** by **Gruters;** Identical to H 01163 Recovery Residences

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478326  D       S                       CA, Gruters             Delete everything after  03/28 02:47 PM
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Tab 11	**SB 1164** by **Leek;** Compare to CS/CS/CS/H 00615 Delivery of Notices from Landlords to Tenants

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691736  D       S                       CA, Leek                Delete everything after  03/28 01:18 PM
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Tab 12	**SB 1622** by **Trumbull (CO-INTRODUCERS) Rouson, Berman;** Identical to H 06001 Recreational Customary use of Beaches
Tab 13	**SB 1674** by **Fine (CO-INTRODUCERS) Calatayud, Polsky;** Similar to CS/H 00669 Unrated Bonds

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555350  A       S                       CA, Fine                Delete L.32 - 34:        03/28 11:41 AM
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Tab 14	**SB 1714** by **Burton (CO-INTRODUCERS) Arrington;** Similar to CS/H 00701 Local Housing Assistance Plans

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136390  A       S                       CA, Burton              Delete L.19 - 120:       03/27 03:42 PM
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Tab 15	**SB 1730** by **Calatayud;** Compare to CS/H 00943 Affordable Housing

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768966  A       S                       CA, Calatayud           Delete L.62 - 425:       03/28 03:55 PM
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Tab 16	**SB 1822** by **Martin;** Identical to H 00565 Regulation of Auxiliary Containers

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442264  A       S                       CA, Martin              Delete L.34 - 109:       03/28 02:54 PM
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Tab 18	**SB 482** by **DiCeglie;** Identical to H 00665 Local Government

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator McClain, Chair
Senator Fine, Vice Chair

MEETING DATE: Monday, March 31, 2025
TIME: 4:00—6:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator McClain, Chair; Senator Fine, Vice Chair; Senators Jones, Leek, Passidomo, Pizzo, Sharief, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 4** Judiciary / Rodriguez (Similar H 6509)	Relief of Patricia Ermini by the Lee County Sheriff's Office; Providing for the relief of Patricia Ermini by the Lee County Sheriff's Office; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of the Lee County Sheriff's Office; providing a limitation on the payment of attorney fees, etc. SM JU 03/25/2025 Fav/CS CA 03/31/2025 RC	
2	**SB 24** DiCeglie (Identical H 6503)	Relief of Mande Penney-Lemmon by Sarasota County; Providing for the relief of Mande Penney-Lemmon by Sarasota County; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of Sarasota County, through its employee; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 Favorable CA 03/31/2025 RC	
3	**SB 30** Martin (Identical H 6533)	Relief of the Estate of M.N. by the Broward County Sheriff's Office; Providing for the relief of the Estate of M.N. by the Broward County Sheriff's Office; providing for an appropriation to compensate the estate for injuries sustained by M.N. and her subsequent death as a result of the negligence of the Broward County Sheriff's Office; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 Favorable CA 03/31/2025 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 96** Bernard (Identical H 6521)	Relief of Jacob Rodgers by the City of Gainesville; Providing for the relief of Jacob Rodgers by the City of Gainesville; providing for an appropriation to compensate Jacob Rodgers for injuries sustained as a result of the negligence of an employee of the City of Gainesville; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 03/25/2025 Favorable CA 03/31/2025 RC	
5	**CS/SB 140** Education Pre-K - 12 / Gaetz (Similar CS/H 123, Compare CS/H 1145, S 742)	Charter Schools; Revising which persons or entities may apply for a conversion charter school; revising entities that are included in the Workforce Development Capitalization Incentive Grant Program to include charter schools; requiring a district school board to approve a 5-year plan before occupying purchased or acquired real property, etc. ED 03/17/2025 Fav/CS CA 03/31/2025 RC	
6	**SB 202** Jones (Similar H 11, Compare CS/H 1523, S 1704)	Municipal Water and Sewer Utility Rates; Requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances, etc. RI 03/12/2025 Favorable CA 03/31/2025 RC	
7	**SB 658** Truenow (Compare H 893)	Waiver or Release of Liens; Requiring that waiver and release of lien forms include specific language; authorizing a lienor who executes such lien and release forms in exchange for payment, rather than a check, to condition such waiver and release on receipt of funds, rather than payment of a check, etc. JU 03/25/2025 Favorable CA 03/31/2025 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 712** Grall (Similar CS/H 683)	Construction Regulations; Prohibiting local governments from adopting or enforcing any ordinance, resolution, order, rule, or policy that prohibits, or is enforced to prohibit, property owners from installing synthetic turf on their land; requiring local governmental entities to approve or deny certain price quotes and provide notice to contractors within a specified timeframe; prohibiting the state or political subdivisions that contract for public works projects from penalizing or rewarding bidders for performing larger or smaller volumes of construction work, respectively, for the state or political subdivisions, etc. CA 03/31/2025 AEG RC	
9	**SB 952** Ingoglia (Identical H 6025)	Restrictions on Firearms and Ammunition During Emergencies; Repealing provisions relating to specified automatic restrictions on firearms and ammunition during certain declared emergencies, etc. CJ 03/11/2025 Favorable CA 03/31/2025 RC	
10	**SB 954** Gruters (Identical H 1163)	Recovery Residences; Providing that interim licenses may be issued by the Department of Children and Families to a new owner of a recovery residence; revising the definition of the term “transfer”; revising conditions under which the department may deny, suspend, or revoke the license of a service provider or the operation of any service component or location identified on the license; requiring a county or a municipality to allow certain certified recovery residences in specific zoned districts, without the need to obtain changes in certain zoning or land use; creating the Substance Abuse and Recovery Residence Efficiency Committee within the Department of Children and Families, etc. CA 03/31/2025 AHS RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1164** Leek (Similar CS/CS/H 615)	Delivery of Notices from Landlords to Tenants; Authorizing a landlord to deliver any required notice to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement which specifically agrees to such delivery; requiring a tenant who agrees to such addendum to provide the landlord with his or her valid e-mail address; requiring a landlord to maintain copies of any notice sent by e-mail, with evidence of transmission, etc. JU 03/12/2025 Favorable CA 03/31/2025 RC	
12	**SB 1622** Trumbull (Identical H 6001, H 6043, S 284)	Recreational Customary use of Beaches; Repealing a provision relating to the establishment of recreational customary use of beaches, etc. JU 03/25/2025 Favorable CA 03/31/2025 RC	
13	**SB 1674** Fine (Similar CS/H 669)	Unrated Bonds; Prohibiting local governments from requiring minimum bond ratings in certain circumstances, etc. CA 03/31/2025 GO RC	
14	**SB 1714** Burton (Similar CS/H 701)	Local Housing Assistance Plans; Requiring each county and eligible municipality to include in its local housing assistance plan a certain strategy; providing that lot rental assistance for eligible mobile home owners is an approved home ownership activity for certain purposes; authorizing counties and eligible municipalities to provide certain funds to mobile home owners for rehabilitation and emergency repairs, etc. CA 03/31/2025 ATD RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 1730** Calatayud (Compare H 943, H 995, CS/S 1326)	Affordable Housing; Requiring counties and municipalities, respectively, to authorize multifamily and mixed-use residential as allowable uses in portions of flexibly zoned areas under certain circumstances; prohibiting counties and municipalities from requiring that more than a specified percentage of a mixed-use residential project be used for certain purposes; revising the maximum hurricane evacuation clearance time for permanent residents, which time is an element for which amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance; providing that it is unlawful to discriminate in land use decisions or in the permitting of development based on the specified nature of a development or proposed development, etc. CA 03/31/2025 RC	
16	**SB 1822** Martin (Identical H 565)	Regulation of Auxiliary Containers; Removing obsolete provisions requiring the Department of Environmental Protection to review and update a specified report; prohibiting local regulation of auxiliary containers; preempting such regulation to the state, etc. EN 03/17/2025 Favorable CA 03/31/2025 RC	
17	**Pending Reconsideration:**		
18	**SB 482** DiCeglie (Identical H 665, Compare CS/S 1118)	Local Government; Prohibiting a county from requiring an applicant to take certain actions as a condition of processing a development permit or development order; prohibiting a municipality from requiring an applicant to take certain actions as a condition of processing a development permit or development order, etc. CA 03/25/2025 Pending reconsideration (Unfavorable) CA 03/31/2025 FT RC	
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Fav/CS
3/28/25	CA	Pre-meeting

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 4** – Judiciary Committee and Senator Rodriguez
HB 6509 – Representative Hart
Relief of Patricia Ermini by the Lee County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $626,769.93 TO BE PAID BY THE FLORIDA SHERIFFS SELF INSURANCE FUND ON BEHALF OF ITS INSURED, THE LEE COUNTY SHERIFF'S OFFICE, TO PATRICIA ERMINI AS COMPENSATION FOR DAMAGES AWARDED BY JURY VERDICT IN CONNECTION WITH NEGLIGENT CONDUCT DURING A WELLNESS CHECK BY LEE COUNTY SHERIFF'S DEPUTIES. THE AMOUNT REPRESENTS AN EXCESS JUDGMENT IN THE AMOUNT OF $550,000, PLUS INTEREST, TAXABLE TRIAL COSTS, AND APPELLATE COSTS AWARDED TO MS. ERMINI AS A RESULT OF HER INJURIES.

FINDINGS OF FACT:

On the evening of March 23, 2012, Ms. Robin LaCasse (LaCasse), at approximately 8:40 p.m., placed a phone call to the Lee County Sheriff's office to request a wellness check on her mother, the claimant, Ms. Ermini (then Ms. Mapes) (Ermini).[1] During the call, LaCasse informed the Sherriff's Office that she had spoken with Ermini about an hour before and Ermini seemed distraught and possibly suicidal. LaCasse

[1] Lee County Sherriff's Office, Call from Robin LaCasse CFS#12-125672 at 1, Respondent's Exhibit C.

was concerned that she had been unable to get back in touch with Ermini. During the call, LaCasse also relayed that Ermini had a pistol in her home and that Ermini may have been drinking.[2]

At approximately 8:45 p.m., three Lee County deputies were dispatched to the home of Ermini to conduct the wellness check—Charlene Palmese (Palmese), Robert Hamer (Hamer), and Richard Lisenbee (Lisenbee).[3] Deputies Palmese, and Lisenbee were relatively inexperienced law enforcement officers, Palmese[4] having completed her field training in November of 2011 and Lisenbee having completed his field training in February of 2011.[5] Hamer was the more senior official, with ten years of experience between the Lee County Sherriff's Department and New York City Police Department.[6]

The deputies were advised, by dispatch and computer-aided dispatch of Ermini's name, age (70 years old), that Ermini was going through a divorce, received bad news that day, and was possibly suicidal; that LaCasse was concerned for Ermini's well-being; that Ermini owned a pistol; that Ermini had not answered her phone for the past hour; and Ermini was possibly intoxicated.[7]

Lisenbee was the first to arrive on scene at approximately 8:53 p.m.,[8] parking his patrol vehicle out of view of Ermini's residence. Lisenbee, according to his testimony, did not do a full check of the perimeter of Ermini's home, did not check for open or broken windows, and instead headed to Ermini's front door. Lisenbee banged on the door and announced "Sherriff's Office."[9] Finding the door to be unlocked, Lisenbee briefly stepped into the residence to find the all of the lights turned

[2] *Id.*
[3] Lee County Sherriff's Office, Incident Recall, Claimant's Exhibit 30.
[4] Trial Transcript Vol 1 Day One of Three of Trial: Direct of Charlene Palmese, Claimant's Exhibit 34.
[5] Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Richard Lisenbee, Claimant's Exhibit 35.
[6] Trial Transcript Vol 2 Day Two of Three of Trial Part 1: Direct of Robert Hamer, Claimant's Exhibit 35.
[7] *See* Incident Recall, *supra* note 3, and Trial Transcript Vol 2 Day Two of Three of Trial: Direct and redirect of Karen Snyder-O'Bannon, Claimant's Exhibit 35.
[8] Incident Recall, *supra* note 3.
[9] Direct of Lisenbee, *supra* note 5.

off and it very dark inside.[10] Lisenbee then backed out of the home as Palmese arrived.[11]

Palmese was the next to arrive at 8:55 p.m.,[12] also parking her patrol vehicle out of view of Ermini's residence.[13] After re-entering the home through the door Lisenbee left open, Palmese and Lisenbee stated that Lisenbee again called out "Sheriff's Office," again with no response.[14] The home was in a significant degree of disarray[15] and Lisenbee claimed to see a wine bottle on the floor.[16] At this point, the two deputies, decided that the situation called for additional backup and they backed out of the home.[17]

Hamer was the last of the deputies to arrive, at approximately 8:57 p.m.[18] He retrieved an AR-15 rifle from the trunk of his patrol vehicle and joined Lisenbee and Palmese outside of Ermini's residence.[19] He could not say for certain whether his vehicle was visible from the residence, "but there [were] trees in the back of the picture," of his parked vehicle.[20]

The three deputies (Lisenbee, Palmese, and Hamer) reentered the home and began to "clear" the residence. Lisenbee approached Ermini's bedroom. The bedroom had double-doors, both of which were closed, and the officers could not see through them. Lisenbee opened the door on his right side, and shined a flashlight onto Ermini's bed. He did not knock first and was intentionally obfuscating himself from Ermini's vision with the flashlight.[21]

At this point, the testimony significantly diverges. Lisenbee stated that he announced several times "Sherriff's Office, we're here to help you," and then went into Ermini's bedroom

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[10] *Id.* At trial there did seem to be some inconsistency between Lisenbee's testimony and previous deposition regarding the status of Ermini's front door as to whether it was "unlatched" or simply unlocked, but closed.
[11] Direct of Lisenbee, *supra* note 5.
[12] Incident Recall, *supra* note 3.
[13] Direct of Palmese, *supra* note 4.
[14] Direct of Palmese, *supra* note 4; Direct of Lisenbee, *supra* note 5.
[15] *See* Composite Exhibit—Photographs, Respondent's Exhibit F.
[16] Lee County Sherriff's Office, Sworn Statement of Deputy Richard Lisenbee CFS#12-125672, Respondent's Exhibit J.
[17] *Id.*; Direct of Palmese, *supra* note 4.
[18] Incident Recall, *supra* note 3
[19] Direct of Hamer, *supra* note 6
[20] *Id.*
[21] Direct of Lisenbee, *supra* note 5.

continuing to shout, "Sherriff's Office, we're here to help you." Lisenbee did not think that shouting would frighten Ermini. Lisenbee then said that he saw Ermini lying on her bed in her undergarments. He did not see a firearm at this time. At this point, Ermini appeared to arouse from her sleep, and, according to Lisenbee said, "Who is it?" to which Lisenbee responded again with, "Sherriff's Office, we're here to help you." After this, according to Lisenbee, Ermini responded with "I don't care. I'm gonna shoot you."[22]

Hamer recalled that he first entered the home he went through the living room. Having heard Lisenbee make contact with Ermini, he turned around and looked towards the double doors of Ermini's bedroom. After hearing Ermini state, "I don't care. I'm gonna shoot you," he told her to get back as he and Lisenbee backed away from the double-doors.[23]

Ermini's recollection of the events in her testimony at trial was that she awoke when someone opened the door to her bedroom and heard someone say, "Here she is over here."[24] Upon hearing this, Ermini testified that she said, "Get out of my house, I have a gun." She did not recall hearing anyone say that they were with the Sherriff's Department or that they were there to help her.

Ermini approached her bedroom door with her Glock pistol, and at some point placed her finger onto its trigger.[25] Hamer stated that, as Lisenbee was walking backwards, he saw Ermini approach, place both hands around the grip of her firearm, finger on the trigger, pointing the firearm at him with Ermini stating that "I'm gonna shoot you." At this point, Hamer, having kneeled down into a firing position, stated that he shot at Ermini seven times and that there was no time for him to tell Ermini to drop her firearm.[26]

Ermini recalled in her trial testimony that she was standing behind her opened bedroom door, "apparently" with her

[22] Direct of Lisenbee, *supra* note 5.
[23] Direct of Hamer, *supra* note 6.
[24] Trial Transcript Vol. 4 Day Three of Three of Trial Part 1: Direct of Robert Hamer, Claimant's Exhibit 37.
[25] According to the claimant's own expert witness on Glock firearms, Larry Williams, at the special master's hearing, it would be "impossible" for a Glock pistol such as Ermini's to discharge a round without a person pulling the trigger and the pistol could not accidentally go off simply by being dropped. Since it is not disputed that Ermini's pistol did discharge, she had her finger on the trigger of the firearm at some point.
[26] Direct of Hamer, *supra* note 6.

firearm (which she did not remember picking up). Ermini then stated that she looked around the door and the light of flashlights were hitting her in the eye and said, "Put your flashlights down, I can't see anything." The flashlights then went off of her and that is when she saw "this guy down on his knees with—well, I call it a machine gun," who then opened fire. After being shot twice, Ermini said she asked, "What are you shooting me for?" followed by what sounded like "bombs going off in my house." This is the last thing she could recall from the incident.[27]

Regardless of what series of events prompted it, Hamer fired his AR-15 seven times in Ermini's direction, striking her five times through the closed half of her double-door. At some point after Hamer started firing, Ermini's firearm discharged,[28] with the round later found in the ceiling of her home. Hamer admits to firing first. Hamer stated that he ceased firing upon seeing Ermini fall and drop her weapon, which fell to the left side of Ermini (Ermini is right handed).

The entire time elapsed from when the three deputies entered the home together through the front door and shots being fired is not entirely clear from the record. However, during the special master hearing, counsel for the Claimant played a recording of the dispatch from the night of the incident.[29] From the time that Palmese reported to dispatch that the door to Ermini's home was open until the report of shots fired was approximately 35 seconds. This likely represents the maximum amount of time that elapsed from the time the three deputies entered the home and Ermini was shot. The entire time from when Lisenbee first arrived on scene and shots were fired was likely no more than six to seven minutes.

According to Hamer, he immediately began giving emergency care to Ermini until paramedics arrived.[30] According to the witnesses (deputies and the paramedics that arrived on scene), Ermini still seemed extremely confused as to what

[27] Direct of Ermini, *supra* note 24.
[28] What caused Ermini's discharge is inconclusive. Claimant did present evidence at the special master's hearing that Ermini's firearm may have inadvertently discharged due to a "limp-wrist malfunction," potentially demonstrating that Ermini did not have a full grip of the weapon at the time it discharged. However, even if so, it does not necessarily indicate whether or not Ermini intended to fire at the officers or that the pulling of the trigger of her firearm was inadvertent due to being shot. Regardless, it is clear from the evidence that Ermini had her finger on the trigger of her firearm and that Hamer was the first to shoot.
[29] A full copy of the dispatch audio was also provided in Respondent's Exhibit E.
[30] Direct of Hamer, *supra* note 6.

was happening—asking why the deputies were in her home and why they were trying to kill her. Ermini was subsequently transported to Lee Memorial Hospital for treatment where she ultimately survived her wounds. She was also placed under constant supervision by sheriff's deputies at the hospital due to suspicion that she had committed a criminal offense. Ermini was formally arrested on March 30.[31]

At the hospital, Ermini was diagnosed with gunshot wounds to her head, upper right extremity, and lower left extremity with an open fracture[32] to her femur. She also had blood in the 4th ventricle leading from her brain and wood splinters imbedded in her face from her bedroom door.[33] It was also later discovered that Ermini had a wood fragment from her damaged door lodged in her right eye.

Shortly after Ermini's admission, around 9:35 p.m., the hospital also drew blood for a series of lab tests. As part of the lab test, Ermini's blood alcohol level came back as 0.0148.[34] Dr. Robert O'Connor (O'Connor), a trauma surgeon at Lee Memorial Hospital who helped treat Ermini, stated at trial that although this would be nearly double the legal limit for driving, it does not automatically indicate impairment as alcohol can affect people differently.

Ermini was discharged from the hospital on April 18, ending up staying in the hospital for a total of 26 days. During that time, Ermini had multiple surgeries including skin grafts and a rod placed in her leg.[35]

On June 5, 2012, the State's Attorney Office filed a no information due to lack of evidence, dropping the charges against Ermini.[36]

In describing her injuries at trial, Ermini stated that she still does not see well out of her injured eye and can no longer drive at night, still did not have full range of motion with her arm, still took pain medicine for her leg, and continued to have scars from her injuries. She also suffered for several years

[31] Lee County Sherriff's Office, Criminal Investigation Report, Respondent's Exhibit H.
[32] An open fracture is a broken bone with an open wound or break in the skin.
[33] Trial Transcript Vol 3 Day Two of Three of Trial Part 2: Direct of Robert O'Connor, Claimant's Exhibit 36.
[34] *Id*. Ermini admitted to having "two goblets of wine" that evening. Direct of Ermini, *supra* note 24.
[35] *Id*.
[36] *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1263 (M.D. Fla. 2017)

from fear that someone would come in her room while she was asleep. She testified that she still slept with her "bedroom door locked and my gun real close by."[37]

LITIGATION HISTORY:

On November 10, 2015, Claimant filed a complaint and demand (in Federal Court) for jury trial against Sheriff Mike Scott (Scott), in his official capacity as Sheriff of Lee County, Florida, and Palmese, Lisenbee, Hamer, and William Murphy (Murphy), individually.[38]

On October 24, 2016, Claimant filed an amended complaint.[39] The amended complaint against Scott alleged 13 total counts:

- Count I (Federal Law Claim): Violation Civil Rights against Palmese, Lisenbee, and Hamer for Unlawful Search and Seizure Pursuant to 42 U.S.C. § 1983.
- Count II (Federal Law Claim): Violation of Civil Rights Excessive and Deadly Force against Hamer Pursuant to 42 U.S.C. § 1983.
- Count III (Federal Law Claim): Violation of Civil Rights of Pursuant to 42 U.S.C. § 1983 against Murphy for False Arrest.
- Count IV (Federal Law Claim): Violation of Civil Rights Pursuant to 42 U.S.C. § 1983 Against Murphy for Falsifying an Affidavit to Obtain an Unlawful Search Warrant.
- Count V (State Law Claim): Unlawful Search and Seizure by Palmese, Lisenbee, and Hamer.
- Count VI (State Law Claim): Claim for Battery against Hamer.
- Count VII (State Law Claim): Claim for Gross Negligence against Palmese, Lisenbee, and Hamer.
- Count VIII (State Law Claim): Claim for Negligent Infliction of Emotional Distress against Lisenbee and Hamer.
- Count IX (State Law Claim): Claim for Malicious Prosecution against Murphy.
- Count X (State Law Claim): Claim for Intentional Infliction of Emotional Distress against Murphy.

[37] Direct of Ermini, *supra* note 24.
[38] Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2015 WL 13801355 (M.D.Fla.).
[39] Patricia I. Ermini, formerly known as Patricia I. Mapes, Plaintiff, v. Mike Scott, in his Official Capacity as Sheriff of Lee County, Florida, Charlene Palmese, individually, Richard Lisenbee, individually, Robert Hamer, individually and William Murphy, individually, Defendants., 2016 WL 10951433 (M.D.Fla.).

- Count XI (State Law Claim): Claim for Negligence against Scott for Failure to Properly Train and Supervise.
- Count XII (State Law Claim): Claim for Negligence against Scott.
- Count XIII (State Law Claim): Claim for Defamation against Scott. The amended complaint notes, however, that this count had already been dismissed.

On April 15, 2017, the trial court granted summary judgment dismissing all of the counts in the case, except the portion of Count XII relating to Scott.[40]

On January 9, 2018, a three-day trial was conducted regarding the claim of negligence against Scott, in his official capacity as Sherriff of Lee County. At the conclusion of the trial, the jury found that the negligence of Scott was the legal cause of Ermini's injuries, and also found that Ermini's negligence also contributed to her injuries. The jury found "Ermini's damages for pain and suffering disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, scarring and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future" to be $1,000,000. The jury apportioned fault to be 75 percent with Scott and 25 percent with Ermini, making a total award to Ermini of $750,000.[41] The court subsequently entered a judgment in favor of Ermini for $750,000 on January 12, 2018.

On February 7, 2018, Respondent filed a Motion for New Trial and Renewed Motion for Judgment as a Matter of Law. This motion was denied by the trial court on March 2, 2018.[42]

Respondent subsequently appealed the trial court's decision in the United States Court of Appeals, Eleventh Circuit. This appeal was denied on September 10, 2019.[43]

A *de novo* special master final hearing was held on December 19, 2023. The Legislature is not bound by settlements or jury

[40] *Ermini v. Scott*, 249 F. Supp. 3d 1253, 1283 (M.D. Fla. 2017)
[41] Jury Verdict Form for 2018 WL 1053132 (M.D.Fla.).
[42] *Ermini v. Scott,* 2:15-CV-701-FTM-31CM, 2018 WL 1139053, at *3 (M.D. Fla. Mar. 2, 2018), aff'd, 937 F.3d 1329 (11th Cir. 2019).
[43] *Ermini v. Scott*, 937 F.3d 1329 (11th Cir. 2019).

verdicts when considering a claim bill, passage of which is an act of legislative grace.

CONCLUSIONS OF LAW:

Section 768.28, of the Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

Vicarious Liability

As pointed out by the appellate court, "practically speaking, the deputies' actions are on trial," [44] and Scott was the defendant due to vicarious liability whereby an employer is responsible for actions of employees. Section 30.07, of the Florida Statutes, authorizes such vicarious liability for the actions of deputies stating that, "Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible."

Negligence, Generally

Negligence is the failure to take care to do what a reasonable and prudent person would ordinarily do under the circumstances.[45] Negligence is inherently relative—"its existence must depend in each case upon the particular circumstances which surrounded the parties at the time and place of the events upon which the controversy is based."[46]

Negligence comprises four necessary elements: (1) *duty*–where the defendant has a legal obligation to protect others against unreasonable risks; (2) *breach*–which occurs when the defendant has failed to conform to the required standard of conduct; (3) *causation*–where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) *damages*–actual harm.[47]

Negligent Use of Excessive Force

[44] *Id.* at 1343 (11th Cir. 2019)
[45] *De Wald v. Quarnstrom*, 60 So.2d 919, 921 (Fla. 1952).
[46] *Spivey v. Battaglia*, 258 So.2d 815, 817 (Fla. 1972).
[47] *Williams v. Davis*, 974 So.2d 1052, 1056–1057 (Fla. 2007).

Respondent argues that Ermini's claim is barred in this matter as it is based upon a non-existent cause of action in Florida—negligent use of excessive force. Citing *City of Miami v. Ross*, 695 So.2d 486, 487 (Fla. 3d DCA 1997), *City of Miami v. Sanders*, 672 So.2d 46, 48 (Fla. 3d DCA 1996), and others, Respondent correctly argues that negligent use of excessive force is not a possible cause of action. In *Sanders*, the court points out that excessive force is an intentional tort involving battery, and thus, by its very nature, not negligence. Battery cannot be premised upon an omission or failure to act.[48]

The *Sanders* court does, however, point out that negligence "on the other hand, requires only the showing of a failure to use due care and does not contain the element of intent" and "a separate negligence claim based upon a distinct act of negligence may be brought against a police officer in conjunction with a claim for excessive use of force."[49] "Negligence is not dependent upon bad intention, nor is it necessarily [negated] by good intention."[50]

The issue in this matter is not the force, excessive or otherwise,[51] used by the deputies. Rather, it is whether the deputies were negligent in conducting the wellness check—which then lead to the use of force.

Duty

Duty Element with Government Entities

To have liability in tort for a government entity, there must exist an "underlying common law or statutory duty of care with respect to the alleged negligent conduct. For certain basic judgmental or discretionary governmental functions, there has never been an applicable duty of care."[52] Section 768.28, of the Florida Statutes, does not establish any new duty of care for governmental entities. The purpose of statute was to waive

[48] *Sullivan v. Atl. Fed. Sav. & Loan Ass'n*., 454 So.2d 52, 54 (Fla. 4th DCA 1984).
[49] *Sanders* at 47-48.
[50] *Booth v. Mary Carter Paint Co.*, 182 So.2d 292, 299 (Fla. 2d DCA 1966).
[51] As stated, the excessive force claim made in the original complaint was dismissed via summary judgment. Thus, "excessive force" is not being considered here as part of Ermini's claim.
[52] *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 917 (Fla. 1985).

immunity that prevented recovery for breaches of existing common-law duties of care.[53]

Undertaker Doctrine

Special relationships can give rise to a duty. Such a duty can arise from a status (such as between a parent and child) or can arise from voluntary contracts or undertakings. An undertaking in this sense means an explicit or implicit promise, or commitment, conveyed through words or conduct.[54] Generally, undertakings create a duty which must be performed with reasonable care.[55]

The Florida Supreme Court, in *Wallace v. Dean*, 3 So. 3d 1035, 1049 (Fla. 2009), held that a sheriff, acting through their deputies, owed a common-law duty of care to a specific individual when they undertook to provide a service (a welfare check) to that individual. The Court found that once the deputies—who are agents of the sheriff—"respond, actually engage an injured party, and then undertake a safety check, which places the injured party in a 'zone of risk' because the officers *either* increased the risk of harm to the injured party or induced third parties—who would have otherwise rendered aid—to forebear from doing so."[56] The Court also cited, with approval, the common-law undertakers doctrine stated in Restatement (Second) of Torts section 323:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
> (a) his failure to exercise such care *increases the risk of such harm*, or
> (b) the *harm is suffered* because of *the other's reliance upon the undertaking*.[57]

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[53] *Id.*
[54] Dan B. Dobbs, Paul T. Hayden, and Ellen M. Bublick, The Law of Torts § 410 (2d ed.) (regarding defendant's undertaking creating a duty to the plaintiff).
[55] Roos v. Morrison, 913 So.2d 59, 64 (Fla. 1st DCA 2005).
[56] *Wallace v. Dean*, 3 So.3d 1035, 1040 (Fla. 2009).
[57] *Id*. at 1051.

In the matter at hand, like in *Wallace*, the deputies were engaged in a wellness check, and in so doing, owed a duty to Ermini to exercise reasonable care in doing so. The duty of care owed would be that of a reasonable law enforcement officer.

Breach

In this case, the deputies had been informed that Ermini was potentially intoxicated. They also had been informed that Ermini was potentially suicidal and had a firearm. In entering a fully darkened home and getting no response to their initial inquiries, the deputies should have reasonably inferred that Ermini was either asleep or unconscious. As such, she likely would be slow, or unable, to hear their pronouncements that they were with the sheriff's office and were there to help her.

Further, any reasonable person, and especially a law enforcement officer, should recognize that having unexpected persons in one's darkened home, obscured while shining flashlights while one is asleep at night, would be very likely to be frightening and surprising. It is also not unreasonable to anticipate that a person in such a situation may instinctually reach for a firearm to protect themselves.

Given the obvious risk to Ermini and the officers in the situation, the likely less than 35 seconds from time the three deputies entered the home together through the front door and shots being fired, demonstrates that the deputies were either careless or reckless in assessing the situation and attempting to safely make contact with Ermini to assess her well-being. The conduct of the deputies in conducting the wellness check was negligent in both the management of the situation and time taken to assess alternatives.

Causation

The Respondent argues that Ermini, "either knew she was attempting to kill deputies, or she was too drunk to know she was about to kill deputies who were there to help

her."[58] However, this argument is based solely upon the fact that the deputies "repeatedly announced their presence."[59] The deputies parked their patrol vehicles out of sight (Palmese and Lisenbee testified this was done intentionally, Hamer could not recall or ascertain whether he had done the same, but likely had done so) and Lisenbee intentionally obfuscated himself from Ermini's vision with a flashlight. The deputies did not indicate that they were there at the behest of Ermini's daughter or give any other evidence that they were who they said they were. Thus, Ermini's only audio or visual indication that the deputies were law enforcement with no ill-intention were the deputies' announcement—a statement any unlawful intruder could make as well.

In addition, the record does not indicate that Ermini had, at the time of the incident or at any time before the incident, any animus towards law enforcement. Thus, there is no basis to the claim that Ermini was intentionally seeking to kill someone due to that person being a law enforcement officer. Instead, a preponderance of the evidence shows that Ermini was a frightened woman, clothed in undergarments and just aroused from sleep, who was not fully aware of the circumstances within which she suddenly found herself (which may have been partially due to intoxication, discussed further below), who took spur of the moment action to protect herself in her own home from unexpected persons entering her home at night. The deputies may have reasonably feared for their own lives before Hamer shot at Ermini; however, the deputies' own negligent conduct placed themselves in that situation. This same negligence was the cause of Ermini's injuries.

Damages

Through the provision of records and evidence showing Ermini's injuries, the Claimants have established that the jury verdict of $750,000 for pain and suffering was reasonable and should not be disturbed. Though Ermini's health and mental condition has improved over the past decade, her previous and continued suffering, makes the jury award appropriate.

[58] Respondent Sherriff's statement of the case.
[59] *Id*.

Alcohol Defense

Section 768.36, of the Florida Statutes, which is part of Florida's negligence code, states that:

> In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:
> (a) The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and
> (b) As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

In this case, at trial, the district court jury was instructed as to this provision of Florida negligence law. Counsel for Sherriff Scott, in its appeal, challenged the district court's jury instructions and verdict-form entry pertaining to this defense. Counsel argued that the Sherriff was entitled to a "new trial because the district court improperly told the jury about the legal effect of any finding under the alcohol defense—namely, that if proved the defense would bar Ermini from recovering. That information, he says, was unnecessary and was likely to evoke sympathy for Ermini."[60] The appellate court rejected this argument finding that federal law (which controlled this issue in the case) "doesn't preclude district court judges from accurately informing jurors of the effects of their findings—in either their instructions or their verdict forms."[61] Further, the court found that such instructions are permissible if done impassively and accurately.[62]

The jury in this matter considered Ermini to be 25 percent at fault for her injuries as a result of her apparent intoxication on the evening of March 23, 2012. This is well below the standard of 50 percent in section 768.36, of the Florida Statutes.

[60] Ermini v. Scott, 937 F.3d 1329, 1335 (11th Cir. 2019).
[61] *Id*. at 1337.
[62] *Id.*

Owing to Ermini's blood alcohol level taken at the hospital after the shooting and her apparent slow recognition and confusion as to what was occurring in her home on that evening, evidence here shows that Ermini is somewhat at fault for her own injuries. However, far greater responsibility in regards to Ermini's injuries lies with the deputies' negligence in conducting the wellness check that evening. Thus, I concur with the finding of the jury and find that a preponderance of the evidence shows that Ermini was 25 percent at fault for her injuries and Scott's deputies' negligence were 75 percent at fault for Ermini's injuries, through which Scott is vicariously liable in his official capacity

ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The Claimant's attorney has submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded and has not sought any attorney fees for her lobbying effort on behalf of Ermini.[63]

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 4 be reported FAVORABLY.

Respectfully submitted,

Kurt Schrader
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute directs the Lee County Sheriff's Office, rather than its insurer, to make the payment required by the claim bill.

[63] Sworn Affidavit of Colleen J. MacAlister, November 27, 2023.

By the Committee on Judiciary; and Senator Rodriguez

590-02865-25 20254c1

A bill to be entitled

An act for the relief of Patricia Ermini by the Lee County Sheriff's Office; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of the Lee County Sheriff's Office; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on the evening of March 23, 2012, 71-year-old Patricia Ermini spoke on the telephone with her daughter, Robin Lacasse, who found that her mother was extremely upset in the wake of her contentious and expensive divorce after a brief marriage, and

WHEREAS, Ms. Lacasse suggested to her mother that she hang up, take some time to calm down, and, afterward, call her back, which her mother did; however, Ms. Lacasse missed her mother's call, and

WHEREAS, when Ms. Ermini failed to reach her daughter, she went to bed in her bedroom, which was being cooled by a window air conditioner, and

WHEREAS, over the course of half an hour, Ms. Lacasse repeatedly tried to return her mother's call, and, when her mother did not answer, Ms. Lacasse called the Lee County Sheriff's Office (LCSO) to request that a well-being check be conducted to determine whether her mother was safe, and

WHEREAS, shortly before 9 p.m., LCSO dispatch relayed the call for a well-being check to Deputy Charlene Palmese, with Deputies Richard Lisenbee and Robert Hamer also responding to the call, conveying the following information to the deputies:

Ms. Ermini's name and age; that the request for a well-being check had been initiated by Ms. Ermini's daughter, who did not reside in Lee County and was afraid for her mother's life; that Ms. Ermini was in the middle of a difficult divorce; that Ms. Ermini had told her daughter that she "couldn't take it anymore"; that Ms. Ermini's daughter was worried that Ms. Ermini might commit suicide; that Ms. Ermini had never threatened suicide before; that Ms. Ermini did not suffer from mental illness; and that Ms. Ermini had a gun and might have been drinking, and

WHEREAS, at the time of the call, Deputy Lisenbee was on probation and undergoing remedial training, in part because of his demonstrated inability to control scenes or suspects through verbal commands, and he later told investigators that he could not recall receiving training in the conduct of well-being checks, and

WHEREAS, Deputy Palmese had completed her field training only a few days before the call, during which she received instruction on how to respond to a well-being check, but she later told investigators that she could not recall whether, at the time of the call, she had ever actually participated in a well-being check, and

WHEREAS, Deputy Hamer had been to many suicide threat calls, and he made it a practice to carry his rifle when it was known that a firearm was present on the premises where the subject of the call was located, and

WHEREAS, Deputy Lisenbee, who was the first to arrive at Ms. Ermini's home in response to the call, observed that there were no lights on in the home when he arrived and, after a brief

exterior check, went to the front door, where he secured a screen door in the open position, knocked on the door, and announced, "Sheriff's Office," to no response, and

WHEREAS, Deputy Lisenbee determined that the front door was unlocked, opened the door, and again said, "Sheriff's Office," followed by "Anyone here? Anyone home?" to no response, and

WHEREAS, Deputy Palmese was second to arrive, followed by Deputy Hamer, who, like the other deputies, parked out of view from inside the residence, and

WHEREAS, Deputy Hamer retrieved from the trunk of his vehicle his AR-15 rifle, which was equipped with a flashlight and a sighting device that allowed him to find his target more quickly and easily, and

WHEREAS, Deputy Hamer determined that the three deputies, all of whom were wearing dark green uniforms, should go into the residence to clear the house, and

WHEREAS, Deputy Hamer activated the flashlight on his rifle, and Deputy Lisenbee announced "Sheriff's Office" once or twice more before they entered the home, after which they proceeded to move about the dark residence in silence as they cleared the living room, finally arriving at the primary bedroom, which had double doors, both of which were closed, and

WHEREAS, without knocking or further announcing their presence, Deputy Lisenbee opened the right-hand bedroom door and shined his flashlight on a female, who appeared to be asleep on the bed wearing only undergarments, and

WHEREAS, after Deputy Lisenbee entered the bedroom doorway, he announced, "Sheriff's Office. Are you okay?" to which the woman responded, "Who's there? Who's there?," and

WHEREAS, Deputy Lisenbee said, "Sheriff's Office. We're here to make sure you're okay. Are you okay?," and

WHEREAS, Deputy Lisenbee said that, although the woman may have sounded frightened, he did not temper his tone, nor did he ever shine his flashlight on himself to allow Ms. Ermini to see that he was, in fact, a uniformed officer, and

WHEREAS, Deputy Hamer said he heard Ms. Ermini say, "What are you doing here? I have a gun," and

WHEREAS, Deputy Hamer later acknowledged that he didn't know whether Ms. Ermini had heard or understood Deputy Lisenbee, yet nonetheless, he turned off the flashlight on his gun, "took the point," and stepped in front of Deputy Lisenbee because, he said, he had more weaponry, was the senior officer on scene, and had significantly more gun range time, and

WHEREAS, terrified, Ms. Ermini told the person at the doorway, whom she perceived as an intruder, to get out of her house "because [she had] a gun" and, with that, jumped up from the bed and hid behind the still-closed left-hand bedroom door, and

WHEREAS, it remains unclear whether Ms. Ermini grabbed her gun as she ran to shelter behind the door, and

WHEREAS, as Ms. Ermini tried to look around the bedroom door, she was shot multiple times, with Deputy Hamer firing seven rounds from his rifle through the closed bedroom door, and

WHEREAS, according to the chief crime scene investigator, a bullet fired through the middle of the door struck Ms. Ermini in her left leg, shattering her femur and causing her to fall backward onto the floor; another bullet hit her in the upper right arm, leaving a portion of her upper arm missing; and a

third bullet caused a graze wound across the back of her head, and

WHEREAS, a wood splinter from the door lodged in her right eye, temporarily blinding her in that eye, and

WHEREAS, it was less than 2 minutes from the time of entry until Ms. Ermini was shot multiple times and fell to the floor, and

WHEREAS, Deputy Hamer notified dispatch of the shooting and continued to sweep the bedroom before finally delivering first aid to Ms. Ermini, whom he handcuffed because she was still alive and therefore posed a continuing threat to the deputies, and

WHEREAS, Lee County Emergency Medical Services (EMS) were dispatched at the same time as the officers and were waiting just two blocks away, which likely saved Ms. Ermini's life, and

WHEREAS, when the lead paramedic for EMS arrived, he determined that Ms. Ermini had life-threatening injuries to the front and back of her left leg and to the front and back of her right arm, and a laceration to the back of her head just above the neckline, and

WHEREAS, Ms. Ermini repeatedly asked the paramedic why she had been shot, who the intruders were, and why they were in her home, and

WHEREAS, Ms. Ermini's most grievous injury was the shattered femur in her left leg, and moving her caused her significant blood loss and excruciating pain, and

WHEREAS, Ms. Ermini was taken to Lee Memorial Hospital in critical condition and later admitted to the intensive care unit, and

WHEREAS, in addition to the gunshot wounds, Ms. Ermini had numerous wounds on her face from the wood splinters from the bedroom door, and

WHEREAS, an LCSO lieutenant who followed the ambulance to the hospital initially refused the emergency room doctor's request to remove the handcuffs from Ms. Ermini; emergency room staff were told that Ms. Ermini "tried to kill a cop"; and Ms. Ermini's family members were denied visitation, and

WHEREAS, doctors were able to save Ms. Ermini's eye with surgery, but her vision has deteriorated since the incident, and

WHEREAS, Ms. Ermini required multiple surgeries to repair her femur and address her wounds, including multiple skin grafts on her shoulder, and

WHEREAS, after discharge, she suffered a severe septic infection that caused her tremendous pain, and the pain medications she was prescribed induced debilitating paranoia, and

WHEREAS, on March 24, 2012, Sheriff Mike Scott told the news media that Ms. Ermini shot at deputies who had responded to a well-being check and that they returned fire, which directly contradicts Deputy Hamer's statement, in which he indicated that he shot first, and

WHEREAS, on March 29, 2012, Ms. Ermini was arrested in the intensive care unit on two counts of aggravated assault on a law enforcement officer, which the state attorney declined to prosecute, and

WHEREAS, Ms. Ermini was an emergency room nurse in South Florida for many years and had worked hand-in-hand with law enforcement officers, no evidence was ever produced that she had

any animus toward law enforcement officers, and it is still disputed that Ms. Ermini's weapon was discharged during the encounter, and

WHEREAS, Ms. Ermini remained hospitalized for about 30 days and has never fully recovered from her injuries, and

WHEREAS, Ms. Ermini continues to suffer acute pain, fatigue, and a limited range of motion due to the gunshot wound to her upper arm, all of which impair her ability to accomplish many of the activities of daily living, and she also suffers from debilitating posttraumatic stress disorder, and

WHEREAS, Ms. Ermini was forced to sell her home because she cannot afford in-home assistance, and

WHEREAS, Deputy Lisenbee and Deputy Hamer were terminated by the LCSO shortly after the incident, the latter for "conduct unbecoming," and

WHEREAS, in November 2015, Ms. Ermini filed suit against LCSO and the individual deputies involved in the call, and

WHEREAS, on January 12, 2018, after a 4-day trial, a jury that included a retired law enforcement officer awarded $1 million in damages to Ms. Ermini for her pain and suffering, and

WHEREAS, after apportionment of 75 percent of the fault to LCSO, a judgment was entered in Ms. Ermini's favor for $750,000, and

WHEREAS, ultimately, after numerous procedural attempts by LCSO to overturn the judgment, the United States Court of Appeals for the 11th Circuit affirmed the judgment of the United States District Court in Ms. Ermini's favor, and on or about December 9, 2019, the Florida Sheriffs Risk Management Fund, on behalf of its insured, the Lee County Sheriff's Office, paid the

statutory limit of $200,000 in damages under section 768.28, Florida Statutes, and

WHEREAS, this claim bill is for recovery of the excess judgment in the amount of $550,000, plus interest and taxable trial costs and appellate costs awarded to Ms. Ermini in the amount of $76,769.93, for a total claim of $626,769.93, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Lee County Sheriff's Office is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $626,769.93 payable to Patricia Ermini as compensation for injuries and damages sustained.

Section 3. The amount paid by the Lee County Sheriff's Office, pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Patricia Ermini. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Favorable
3/28/25	CA	Pre-meeting

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24** – Senator DiCeglie
HB 6503 – Representative Nix
Relief of Mande Penney-Lemmon by Sarasota County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2,291,364.63. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A $2,491,364.63 JURY VERDICT REGARDING THE NEGLIGENCE OF SARASOTA COUNTY, WHICH RESULTED IN THE INJURY OF MANDE PENNEY-LEMMON.[1]

FINDINGS OF FACT:

The Accident on October 1, 2018

On the afternoon of October 1, 2018, Mande Penney-Lemmon was driving her elderly companion, Mary-Helen, to a doctor's appointment. While traveling on East Venice Avenue, traffic came to a halt and Ms. Penney-Lemmon followed suit. Around the same time, Jill Marie Parnell was driving behind Ms. Penney-Lemmon in her Sarasota County-issued parks-and-recreation truck, which was equipped with an industrial winch and steel brush guard. Without warning, Ms. Parnell struck the rear of Ms. Penney-Lemmon's car at approximately

[1] Sarasota County sent Ms. Penney-Lemmon a check for $200,000 to satisfy its statutorily authorized obligation, but she did not deposit it as she did not want to give the impression that the check was being accepted as full satisfaction of the $2,491,364.63 judgment. Regardless of the outcome of the claim bill, the County said it would send another check.

25 mph, knocking Ms. Penney-Lemmon's vehicle into two stopped vehicles in front of her. Both Ms. Penney-Lemmon and her companion were wearing their seatbelts at the time of the collision.

LITIGATION HISTORY:

A lawsuit was filed in June of 2022 with a claim of vicarious liability negligence on behalf of Mande Penney-Lemmon against Sarasota County.[2] The complaint alleged that the County's employee, Jill Marie Parnell, negligently rear-ended Ms. Penney-Lemmon, causing Ms. Penney-Lemmon to sustain life-altering injuries and preventing her from being able to work.

Trial

At trial, Ms. Penney-Lemmon called her neurologist (Dr. Sanjay Yathiraj) to testify that he diagnosed her with a traumatic brain injury.[3] He conducted a physical exam, reviewed her scans, and reviewed her medical history, and he determined that she had chemical changes and electrical changes on the brain arising from a trauma. Ms. Penney-Lemmon also presented evidence that her symptoms—migraines, shoulder pain, neck pain, inability to focus, inability to recall, and pain radiating on her left side—only began after the accident.

The County contested the claim at trial and raised concerns with the causation and damages elements of the claim.[4] Specifically, the County argued that Ms. Penney-Lemmon's scans showed signs of multiple sclerosis that may have pre-existed the accident; this medical opinion raised questions as to the cause of her symptoms, which the County argued warranted more testing.

Regarding damages, the County believed[5] that more testing was required to determine if Ms. Penney-Lemmon had a traumatic brain injury or multiple sclerosis; therefore, it argued no damages should be awarded to Ms. Penney-Lemmon unless and until she has a definitive diagnosis.

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[2] *See Penney-Lemmon v. Sarasota County*, 2022 CA 2865, Complaint (June 6, 2020).
[3] *See* Trial Transcript, 239-260 (Apr. 8, 2024).
[4] The County otherwise admitted that Ms. Parnell, its employee, was negligently operating her vehicle.
[5] The County expressly reaffirmed this position at the special master hearing.

Jury Verdict

Ms. Penney-Lemmon presented evidence in the form of a Life Care Plan ("Plan") that detailed the future medical expenses Ms. Penney-Lemmon was expected to incur for the treatment of her injuries.[6] This Plan included recommended treatment from doctors of various specialties, including:

- Mental Health/Behavioral Health
- Physical Therapy
- Neurospine
- Orthopedic Surgery
- Neurology
- Primary Care

The Plan included projected future expenses totaling $851,851 and medication totaling $74,118.24.

The jury, after considering both parties' presented evidence, rendered a verdict[7] awarding Ms. Penny-Lemmon:

- $71,364.63 for past medical expenses
- $500,000 for future medical expenses

The jury also awarded Ms. Penney-Lemmon:

- $120,000 in past lost wages
- $300,000 in future lost wages
- $400,000 for past pain and suffering
- $1,100,000 for future pain and suffering

After the jury rendered its verdict, the court entered a final judgment in favor of Ms. Penny-Lemmon in the amount of $2,491,364.63.

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature.

[6] *See* Future Medical Treatment and Cost Tables.
[7] *See Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024).

The County does not support the relief of Ms. Penney-Lemmon, and it is contesting the entire amount of damages.[8]

CONCLUSIONS OF LAW:

The claim bill hearing held on January 17, 2025, was a *de novo* proceeding to determine whether Sarasota County is liable in negligence for damages caused by its employee, Jill Marie Parnell, acting within the scope of her employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Under the legal doctrine of *respondeat superior*, Sarasota County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Being that Ms. Parnell was operating a parks-and-recreation vehicle in the course and scope of her employment at the time of the collision, and because the vehicle was owned by Sarasota County, the County is responsible for negligence committed by Ms. Parnell.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) – damages – actual harm.[9]

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff.[10] The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.

[8] The undersigned asked counsel for the County if there was a number his client would be comfortable compromising with, and he responded that he was not authorized to provide a number. Special Master Hearing, 4:38:05-4:38:33.
[9] *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2003).
[10] *Alachua Lake Corp. v. Jacobs*, 9 So. 2d 631, 632 (Fla. 1942).

In this case, Sarasota County's liability depends on whether Ms. Parnell negligently operated her parks-and-recreation truck and whether that negligent operation caused Ms. Penney-Lemmon's resulting injuries.

Duty
A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.

In this case, Ms. Parnell was responsible for exercising the duty of reasonable care to others while driving her parks-and-recreation vehicle. Any person operating a vehicle within the state "shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section."[11]

Breach
The undersigned finds that Ms. Parnell breached the duty of care owed to Ms. Penney-Lemmon.

Ms. Parnell was wearing a headset while driving[12] to hear the navigation directions to her next work meeting. She also testified that nothing was functionally wrong with her vehicle before the crash and that she did not realize the cars in front of her were even stopped until she collided with them. The weather was reportedly clear, and there was nothing obstructing Ms. Parnell's vision; she simply was not paying attention to the halted traffic in front of her and rear-ended Ms. Penney-Lemmon's vehicle.

Causation
Ms. Penney-Lemmon's injuries were the natural and direct consequence of Ms. Parnell's breach of her duty. Ms. Parnell was acting within the scope of her employment at the time of the collision. Sarasota County, as the employer, is liable for damages caused by its employee's negligent act.

[11] Section 316.1925, F.S. Ms. Parnell was cited for careless driving in violation of section 316.1925, of the Florida Statutes. *See* Florida Traffic Crash Report , 4 (Oct. 1, 2018)..
[12] Though she was not cited for this under section 316.304, of the Florida Statutes, Ms. Parnell testified that she was indeed wearing a headset for navigation purposes while driving.

Sarasota County contests the causation element and argues that more testing needs to be conducted to determine what Ms. Penney-Lemmon's injury is. The County had a doctor testify before the special masters,[13] and that doctor believes there are signs in Ms. Penney-Lemmon's scans that suggest she was misdiagnosed with traumatic brain injury when she shows signs of multiple sclerosis, which the County argues pre-existed the accident.

Ms. Penney-Lemmon explained that, after the accident, her chiropractor referred her to the neurologist for: acute post-traumatic headaches, acute pain due to trauma, post-concussive syndrome, TMJ disorder, radialopathy—cervical region, and spinal enthesopathy—cervical region. Ms. Penney-Lemmon, herself, testified that she had none of these symptoms prior to the accident. Additionally, she was not seeking treatment for any of these symptoms prior to the accident.

Ms. Penney-Lemmon presented testimony and depositions from both her chiropractor and her neurologist. Regarding the multiple sclerosis theory, her neurologist testified that there was no indication of multiple sclerosis in her patient history or her symptom complaints.[14] The neurologist also testified that Ms. Penney-Lemmon was also not being treated for multiple sclerosis and has never been treated for multiple sclerosis; she was being treated for traumatic brain injury and diffused axonal injury.[15]

The undersigned finds that Ms. Penney-Lemmon presented sufficient evidence to prove that the accident was the cause of her injuries.

Damages
A plaintiff's damages are computed by adding these elements together:

Economic Damages
- Past medical expenses[16]
- Future medical expenses

[13] Special Master Hearing, 1:33:20-2:06:20.
[14] See Trial Transcript, 259 (Apr. 8, 2024).
[15] *Id*.
[16] Counsel for the County stated that his client had no position to challenge the past medical expenses. Special Master Hearing, 4:33:30-4:33:46.

Non-Economic Damages

- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

The claimant's attorney provided financial data that projected Ms. Penney-Lemmon's total past medical charges to be $71,364.63 and presented evidence that her total medical expenses will be approximately $417,000 to $600,000.[17] Additionally, her counsel calculated her past lost wages to be $120,000 and her future lost wages to be $300,000.[18] The claimant's attorney also argued that Ms. Penney-Lemmon's past non-economic damages amount to $400,000 and her future non-economic damages amount to $1,100,000.[19]

The County argued that these damages were inappropriate because it is unclear if Ms. Penney-Lemmon suffers from traumatic brain injury or multiple sclerosis; the County believes there are signatures of multiple sclerosis, and it does not want to pay for a pre-existing condition. When asked if there was a number the County would compromise with, counsel for the County said no; it is contesting the damages in the entirety.[20]

The undersigned finds that Ms. Penney-Lemmon presented evidence that was sufficient to prove that she suffers from a traumatic brain injury and requires current and future treatment for that injury.

IMPACT ON BUDGET:

Counsel for the County was asked what the impact would be on the County's budget if this claim bill were passed, to which he responded: "Every dollar can only be spent once. So if we are required to spend…whatever amount the Legislature determines on paying above the amount set by 768.28, [that is] money we can't use for other things."[21]

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[17] *See* Letter from Carl E. Reynolds, Esquire, To Special Masters Mawn and Thomas, 5 (Jan. 30, 2025).
[18] *See* Trial Transcript, 223 (Apr. 9, 2024); *see also Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024).
[19] *See Penney-Lemmon v. Sarasota County,* 2022 CA 2865, Verdict (Apr. 10, 2024). Ms. Penney-Lemmon testified that, due to the accident, she has experienced a significant reduction in her quality of life, she cannot work, and she requires treatment for her ongoing health issues.
[20] Special Master Hearing, 4:38:05-4:38:33.
[21] *Id*., 4:38:34-4:39:02.

Counsel for the County was also asked if the funds were available to pay the claims bill, to which he responded: "We operate with a healthy county reserve system, but… it's a choice… it then constrains the ability of Sarasota County to be able to make other choices."[22]

Counsel also stated that the County has claim bill insurance and believes the amount requested in this claim bill meets the threshold to trigger the insurance.[23]

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded.[24] The claimant's attorney has agreed to limit fees to 25 percent of any amount awarded by the Legislature.[25] Additionally, lobbying fees will be limited to 5 percent of any amount awarded by the Legislature.[26]

RECOMMENDATIONS:

Based on the reasons above, the undersigned recommends that Senate Bill 24 be reported FAVORABLY.

Respectfully submitted,

Oliver Thomas
Senate Special Master

cc: Secretary of the Senate

[22] *Id*. at 4:39:05-4:39:19.
[23] Special Master Hearing, 4:44:18-4:45:04.
[24] Section 768.28, F.S.
[25] *See* Sworn Affidavit Regarding Fees (Dec. 4, 2024).
[26] *Id*.

By Senator DiCeglie

18-00133A-25 202524__

A bill to be entitled

An act for the relief of Mande Penney-Lemmon by Sarasota County; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of Sarasota County, through its employee; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on or about October 1, 2018, Mande Penney-Lemmon was lawfully driving over the Venice Avenue Bridge in Venice and came to a complete stop when traffic stalled in front of her vehicle at or near the intersection of East Venice Avenue and Tamiami Trail North, and

WHEREAS, at the same time, Jill Parnell, an employee of Sarasota County, who was acting within the course and scope of her official duties as a supervisor for the county's Department of Parks, Recreation, and Natural Resources, was driving over the same bridge in a motor vehicle owned by Sarasota County, and

WHEREAS, it was a clear and sunny day, and there were no visual obstructions as Ms. Parnell was driving, and

WHEREAS, Ms. Parnell admitted that she was wearing headphones at the time and did not notice that traffic had come to a stop ahead of her, and

WHEREAS, Ms. Parnell's vehicle collided directly into the back of Ms. Penney-Lemmon's vehicle, the impact of which caused Ms. Penney-Lemmon's vehicle to hit the vehicle stopped in front of her, and

WHEREAS, due to the impacts involving both the rear and

front of Ms. Penney-Lemmon's vehicle which were caused by Ms. Parnell's negligent driving, Ms. Penney-Lemmon suffered significant physical and neurological injuries, including, but not limited to, discogenic injuries to her neck, disc herniation in her lower back, a type II SLAP tear in her left shoulder, and bilateral temporomandibular joint dysfunction, all of which have required medical intervention and have had a negative impact on her quality of life, and

WHEREAS, Ms. Penney-Lemmon was subsequently diagnosed with a traumatic brain injury as a result of the accident which will limit her ability to function normally for the remainder of her life, and

WHEREAS, Ms. Penney-Lemmon continues to suffer from chronic headaches and anxiety and depression related to the accident, and

WHEREAS, Ms. Penney-Lemmon brought a civil action against Sarasota County in the Twelfth Judicial Circuit in and for Sarasota County, case number 2022-CA-2865, for the negligent acts of its employee Ms. Parnell, which resulted in injuries to Ms. Penney-Lemmon, and

WHEREAS, the jury found that negligence on the part of Sarasota County, through the actions of its employee Ms. Parnell, was the cause of the injuries and damages to Ms. Penney-Lemmon and issued a verdict in her favor in the amount of $2,491,364.63, plus interest at the rate of 9.34 percent per annum, or 0.000255191 percent per day, for past and future damages, and

WHEREAS, Sarasota County has paid the statutory limit of $200,000 in damages under s. 768.28, Florida Statutes, and

WHEREAS, this claim bill is for recovery of the excess judgment in favor of Ms. Penney-Lemmon, in the amount of $2,291,364.63, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Sarasota County is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the amount of $2,291,364.63, payable to Mande Penney-Lemmon as compensation for injuries and damages sustained.

Section 3. The amount paid by Sarasota County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mande Penney-Lemmon. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/25	JU	Favorable
3/28/25	CA	Pre-meeting
	RU	

March 27, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30** – Senator Martin
HB 6533 – Representative LaMarca
Relief of Estate of M.N. by the Broward County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2,608,258.50 PAYABLE BY THE BROWARD SHERIFF'S OFFICE TO THE ESTATE OF M.N. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A JURY AWARD AND ASSOCIATED AWARDED COSTS THAT AROSE FROM A LAWSUIT ALLEGING THAT THE NEGLIGENCE OF THE BROWARD SHERIFF'S OFFICE, ITS EMPLOYEES, AND OTHER DEFENDANTS RESULTED IN THE DEATH OF M.N.

FINDINGS OF FACT:

M.N. was the daughter of Keshia Walsh and Christopher Nevarez. She was born on April 20, 2016[1] and died on October 28, 2016.[2] Ms. Walsh and Mr. Nevarez are also parents to D.N., born February 2, 2012.[3]

From approximately January to September 14, 2016, Ms. Walsh lived in the home of Ann McClain, Mr. Nevarez's mother. D.N., and, after her birth, M.N., also lived with Ms.

[1] Claimant's Exhibit 49, M.N. Birth Certificate.
[2] Claimant's Exhibit 32, M.N. Death Certificate.
[3] Claimant's Exhibit 1 at 1, Intake Report.

McClain during this timeframe.[4] Mr. Nevarez lived separately at his girlfriend's house.

Mr. Nevarez and Ms. Walsh split care for M.N. while the other worked. Generally, Mr. Nevarez cared for M.N. at Ms. McClain's home on certain days, and Ms. Walsh cared for M.N. on other days. If one could not provide care for M.N. on their assigned day, it fell to that person to find alternate care.[5]

On August 19, 2016, Ms. Walsh brought M.N. to Broward Health hospital. She reported that M.N. had fallen from a couch at Juan Santos' dwelling and received a black eye. The hospital x-rayed M.N., and did not find any fractures.

Mr. Nevarez and Ms. Walsh brought M.N. to a follow up medical appointment at Personal Care Pediatrics pursuant to follow up care instructions from Broward Health hospital.[6] At that visit, Mr. Nevarez questioned the doctor whether it was likely that M.N. had borne her injuries as the result of a fall, and the doctor responded that it was possible.

On September 14, 2016, Ms. Walsh and Mr. Nevarez had a conflict. Ms. Walsh, abruptly moved herself, D.N., and M.N. out of Ms. McClain's home and into the home of Ms. Walsh's co-worker, Juan Santos, and his daughter K.S.

Mr. Nevarez did not attempt to contact Ms. Walsh for approximately 2 weeks after the confrontation in order to "let her cool off." He further testified that this sort of behavior had happened before, and that he expected Ms. Walsh to return to Ms. McClain's home eventually. Ms. McClain maintained intermittent contact via text messages with Ms. Walsh, but could not discover where Ms. Walsh and the children (D.N. and M.N.) were living.

Mr. Nevarez and Ms. McClain both testified that they thereafter attempted to see M.N. and D.N. by:[7]

[4] Claimant Exhibit 87 at 159-161, Christopher Nevarez Testimony at TPR Hearing.
[5] Claimant Exhibit 87 at 159, Christopher Nevarez Testimony at TPR Hearing.
[6] Mr. Nevarez Claim Bill 30 hearing testimony. *See also*, Claimant Exhibit 56 at 6, Personal Care Pediatrics File for M.N.
[7] Mr. Nevarez, Claim Bill 30 hearing testimony.

- Texting Ms. Walsh at the number previously used to contact her, although it is unclear whether the messages went through to Ms. Walsh's phone;[8]
- Asking for Ms. Walsh at her place of employment;
- Attempting to visit D.N. at his school;
- Having Ms. McClain and other friends attempt to follow Ms. Walsh's car home from her place of employment.

Some of Mr. Nevarez's text messages did inquire when he would next see his children. Other text messages were profane and threatening to Ms. Walsh.[9]

October 13, 2016 Medical Diagnosis and Treatment

On October 13, 2016, Ms. Walsh brought M.N. to Northwest Medical Center with complaints of a fever and leg pain. M.N. was admitted as a patient of Dr. Font in the ER at 3:23 pm.[10] When questioned about the possible cause of M.N.'s leg pain, Ms. Walsh reported that there was no recent trauma and could not provide an explanation.[11]

Between 3:45 and 5:00 p.m., M.N. was x-rayed and diagnosed with subacute fractures in her left proximal tibia and fibula.[12]

Dr. Font then initiated a call to the child abuse hotline to report M.N.'s injuries as the result of suspected abuse.[13] At 5:45 pm, the treating nurse entered into M.N.'s chart that the first DCF notification had been made.[14]

Dr. Font then disclosed the diagnosed fractures to Ms. Walsh; at this time, Ms. Walsh reported that M.N. "had a fall from a couch about 2 months ago. She was seen at North Broward Hospital and had a CAT scan off the brain and some other x-rays."[15] Dr. Font noted that her continued conversations with Ms. Walsh about the source of the injury were not satisfactory,

[8] Mr. Nevarez testifies that he believes his phone number had been blocked by Ms. Walsh, and therefore she did not receive his messages. See also, Claimant Exhibit 87 at 171 and 192, Christopher Nevarez Testimony at TPR Hearing.
[9] Claimant Exhibit 30, Text Messages between Chris Nevarez and Keshia Walsh.
[10] Claimant Exhibit 55 at 1, *Northwest Medical Center Coding Summary for M.N.'s Oct. 13, 2016 visit*.
[11] Claimant Exhibit 68 at 33-36, Deposition of Dr. Font (May 16, 2022); and Claimant Exhibit 55 at 1, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit* ("Mom denied any recent trauma.")
[12] Claimant Exhibit 55 at 6-7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[13] Claimant Exhibit 68 at 24-35, Deposition of Dr. Font (May 16, 2022).
[14] Claimant Exhibit 55 at 7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[15] Claimant Exhibit 55 at 7, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.

and that Ms. Walsh "couldn't give [us] really good information […] I felt like mom the whole time was trying to say something happened at the baby-sitter."[16]

Dr. Font reviewed M.N.'s records from her August North Broward Hospital visit and noted an x-ray was completed at that time, and no fractures were found.[17] She further noted that the August hospital chart had noted "facial contusion/bruising."[18]

At approximately 5:00 p.m., Dr. Font contacted M.N.'s pediatric office to discuss M.N.'s medical history.

At 5:20 p.m., Dr. Font consulted with an orthopedic specialist, Mark Fortney. He stated that he did not feel that the October 13th tibia fracture was related to the fall from the couch 2 months ago. Mr. Fortney stated that he suspected M.N.'s fractures to be about 3-4 weeks old, and "could be nonaccidental" and recommended reporting the injury.[19]

At 5:45 p.m., Dr. Matthew Buckler conducted a bone osseus survey of M.N.'s x-rays. Dr. Buckler telephonically disclosed his findings of a "partially healed left proximal tibial and fibular metaphyseal fracture with periostitis" and "additional distal left radial metaphyseal fracture" to Dr. Font at approximately 6:02 pm.[20]

Dr. Font's shift ended at 7:00 p.m.; she waited an additional hour to attempt to meet with the DCF investigator but left Northwest Medical Center at 8:00 p.m. Dr. Font testifies that no child protective investigator contacted her about M.N. at any point.[21]

At 9:25 p.m., the treating nurse noted in M.N.'s medical file that a status update call was made to DCF.[22] It was subsequently determined (at 10:13 p.m.) that the "hot line

[16] Claimant Exhibit 68 at 39-40, Deposition of Dr. Font (May 16, 2022).
[17] Claimant Exhibit 55 at 9, *Northwest Medical Center Emergency Provider Report for M.N.'s Oct. 13, 2016 visit*.
[18] *Id*. at 8.
[19] *Id*. at 8-9.
[20] Claimant Exhibit 11, Northwest Medical Center Diagnostic Imaging Reports (October 13, 20216).
[21] Claimant Exhibit 68 at 64, 69-70, Deposition of Dr. Font (May 16, 2022).
[22] Claimant Exhibit 55 at 4, *Northwest Medical Center EDM Live Emergency Patient Record for M.N*.(Oct. 13, 2016).

keyed it in wrong earlier, and the investigator would arrive at the hospital to initiate the investigation in about three hours.

October 13, 2016 Investigation by BSO

At about 10:15 p.m., BSO dispatched child protective investigator (CPI) Henry to Northwest Medical Center to investigate Dr. Font's report. CPI Henry's handwritten notes detail her next investigative step as a face-to-face with M.N. and Ms. Walsh at 10:54 p.m.. CPI Henry's chronological notes, entered at a computer the next afternoon, detail an intervening contact with the reporter—however, this is disputed by Dr. Font's testimony, which states that she never spoke to a CPI about M.N.

CPI Henry conducted a "face-to-face" meeting with M.N. and Ms. Walsh at 10:54 pm. During her meeting with Ms. Walsh, CPI Henry learned that:

- M.N. had been taken to North Broward Hospital in August of 2016 as a result of a fall from the couch.
- Ms. Walsh brought M.N. to the hospital on this day as a result of a fever and stiff legs.
- Ms. Walsh used several babysitters to care for M.N., including a friend named Valerie and a "Portuguese lady." Ms. Walsh provided CPI Henry with a business card that provided a phone number and that advertised "babysitting services", but did not provide a business or personal name for the "Portuguese lady."
- Ms. Walsh lived with a roommate, Juan Santos.[23]

CPI Henry next met with nurse Margaret Vincent at 11:05 p.m.[24] This implies that the face-to-face meeting with Ms. Walsh and M.N. lasted no more than 10 minutes.

CPI Henry's notes of her investigation noted M.N.'s three diagnosed fractures, her own observations of a mark under M.N.'s eye,[25] and of discoloration on M.N.'s left wrist.[26]

M.N. was discharged from Northwest Medical Center at 11:38 p.m.[27]

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[23] Claimant Exhibit 3, CPI Henry Handwritten Case Notes for Case 2016-287154.
[24] *Id*.
[25] Toniele Henry Deposition, p. 103, line 15-21, stating that, "It wasn't a black eye […] It was just like a faint little puffy thing under her eye."
[26] Claimant Exhibit 2 at 5, Child Protective Investigation Chronological Record of CPI Henry on 10/13/2016.
[27] Claimant Exhibit 12, Northwest Medical Center Discharge Summary (Oct. 13, 2016).

Immediately after M.N.'s discharge from Northwest Medical Center, CPI Henry visited Ms. Walsh at Mr. Santos' home. She was met there by the Broward County Sheriff's Office Law Enforcement.

Law enforcement reported in their investigation report that M.N. had "swelling and discoloration to her left eye [which] appeared to be an injury that was sustained recently." Additionally, law enforcement asked Ms. Walsh how M.N.'s fractures were sustained, to which she responded that she had no idea, but that she wouldn't be bringing her to the babysitter who she had been using any more.[28]

CPI Henry conducted a Child Present Danger Assessment on October 13. The report found that there was no present danger threat to M.N., and that "*[t]he mother took the victim to Northwest medical center because the child was exhibiting some stiffness in her leg and she has a fever. The fever could be from the child teething. There was a[n] x-ray completed in which revealed the injuries occurred about two to three weeks ago. The mother advises the victim child fell off the couch in August and was seen at North Broward hospital. The mother advised the child goes to private babysitter when she goes to work. The mother has completed a follow up appointment with the pediatrician. CPT was contacted.*"[29]

Of relevant note, CPI Henry's Present Danger Assessment indicated "No" to the question presented: "Child has a serious illness or injury (indicative of child abuse) that is unexplained, or the Parent/Legal Guardian/Caregiver explanations are inconsistent with the illness or injury."

While still at Mr. Santos' home, CPI Henry developed an impending safety plan that Ms. Walsh signed. The safety plan required that Ms. Walsh would: not leave the child on the couch or bed, and would place M.N. in the pack and play when she falls asleep; enroll M.N. in a licensed daycare; not leave the children in the care of the babysitter or home where the

[28] Claimant Exhibit 40, *BSO Investigative File for Case 2016-287154*.
[29] Claimant Exhibit 6, *Florida Safety Decision Making Methodology Child Present Danger Assessment, FSFN Case ID 101483774* (Oct. 14, 2016).

incident occurred; notify CPI of the identity of who will be providing care to the children while she [Ms. Walsh] works.[30]

CPI Henry took the following actions in furtherance of the abuse investigation regarding M.N.:[31]

- Called the Child Protective Team to refer M.N.'s case on October 14, 2016. She was told that they would conduct a review of M.N.'s medical files.[32]
- Received and uploaded M.N.'s medical files from Northwest Medical Center on October 15, 2016. CPI Henry does not remember reviewing these files.
- Attempted to call the 'Portuguese Babysitter' once on October 17, 2016. No contact was made, however.

CPI Henry did not attempt to contact Juan Santos, nor refer him to the BSO Analytical team for a background and related issues check.

CPI Henry did not attempt to contact Mr. Nevarez at any point from October 15 to October 24, 2016.

CPI Henry's investigation was subject to a supervisory review on October 18, 2016, wherein supervisor Bossous recommended that CPI Henry obtain medical file from M.N.'s August hospital visit, obtain collateral contact from neighbors, interview the [Portuguese] babysitters, and offer daycare services.[33] CPI Henry's chronological case notes do not reflect any activity on M.N.'s investigation after receipt of these recommendations.

October 24th, 2016 Injuries

On October 24, 2016, M.N. was brought to North Broward Medical Center in an unresponsive state and transferred via air ambulance to Broward General Medical Center. It was later determined that Juan Santos had beaten M.N. and caused significant injuries to her skull.

On October 28, 2016, M.N. died as a result of her injuries.[34]

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[30] Claimant Exhibit 7, *Child Safety Plan* (October 14, 2016). Notably, Ms. Walsh placed M.N. in the care of babysitters beginning on October 15th, 2 days after signing the safety plan, and failed to communicate this to the CPI. See Claimant Exhibit 41, *Walsh Babysitting Timeline* (Oct. 27, 2016).
[31] Claimant Exhibit 2, *T. Henry Chronological Notes for M.N.'s abuse investigation* (Oct. 13-Oct. 24, 2016).
[32] Claimant Exhibit 53 at 1, Broward *County Child Protection Team Final Case Summary Report* (Dec. 13, 2016).
[33] Claimant Exhibit 25, *Supervisor Consultation* (Oct. 18, 2016).
[34] Claimant Exhibit 32, *M.N. Death Certificate* (Oct. 28, 2016).

On October 24, 2016, BSO placed D.N. in the care of Christopher Nevarez and implemented a safety plan preventing Ms. Walsh from having contact with D.N. Ms. Walsh's parental rights to D.N. were terminated on June 20, 2018.

LITIGATION HISTORY:

A jury trial was conducted in August 2023, wherein the claimant alleged that BSO negligently failed to protect M.N. from abuse, thereby causing her death.[35] On August 16, 2023, the jury rendered a verdict in favor of the estate of M.N., with 36.6 percent of the fault apportioned to Christopher Nevarez, 2.7 percent of the fault apportioned to Ann McClain, and 58 percent of the fault apportioned to the BSO.[36] An additional cost judgment of $88,258.50 was entered on July 16, 2024. The claimants executed two settlement agreements before the matter went to trial—the first with M.N.'s pediatricians for the payment of $100,000, and the second with Broward County for $90,000 payment made to the estate of M.N.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 3, 2025, was a *de novo* proceeding to determine whether BSO is liable in negligence for damages suffered by the claimant's estate, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by jury verdicts when considering a claim bill, the passage of which would be an act of legislative grace.

In this matter, the claimant alleges negligence on behalf of an employee of the BSO. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.[37]

Negligence

Negligence is "the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances;"[38] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces

35 *Ann McClain v. Sheriff of Broward County*, CACE 18-025385(02) (Fla. 17th Cir. Ct. 2025).

36 Claimant's Exhibit 94, *Ann McClain v. Sheriff of Broward County*, CACE 18-025385(02) (Fla. 17th Cir. Ct. 2025).

37 *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

38 Florida Civil Jury Instructions 401.4 – Negligence.

or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[39]

In a negligence action, "a plaintiff must establish the four elements of duty, breach, proximate causation, and damages."[40]

BSO's Duty of Care

Whether a duty of care exists is a question of law.[41] Statute, case law, and agency policy describe the duty of care owed by a CPI during the course of an investigation of abuse. At the time of its involvement with M.N., the BSO was the contracted provider of child protective investigations for Broward County.[42] The BSO has a duty to reasonably investigate complaints of child abuse and neglect.[43]

However, where the "express intention of the legislature is to protect a class of individuals from a particularized harm, the governmental entity entrusted with the protection owes a duty to individuals within the class."[44] It has been found that "HRS is not a mere police agency and its relationship with an abused child is far more than that of a police agency to the victim of a crime … the primary duty of HRS is to immediately prevent any further harm to the child…[.]"[45]

Broward County, separately, was the contracted authority to perform child protective team services in Broward County, including completing medical examinations, nursing assessments, specialized and forensic interviews, providing expertise in evaluating alleged maltreatments of child abuse and neglect.

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[39] Florida Civil Jury Instructions 401.12(a) – Legal Cause, Generally.
[40] *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).
[41] *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).
[42] Section 39.3065, F.S.
[43] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (stating that the Dept. of Health and Rehabilitative Services, a precursor to the Dept. of Children and Families, has a statutory duty of care to prevent further harm to children when reports of child abuse are received); *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).
[44] *Id.* (noting that the child was a member of the class protected under a specific statute and the [Department of Health and Rehabilitative Services] owed a statutory duty to protect him from abuse and neglect).
[45] *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 529 So. 2d 258, at 261 (Fla. 1988).

BSO's Policies and Procedures Regarding Investigation

The BSO is required to commence an investigation immediately if it appears that the immediate safety or well-being of a child is endangered, […] or that the facts otherwise so warrant.[46]

BSO Must Interview and Contact Relevant Individuals

If an abuse investigation is initiated at a hospital emergency room, the CPI must consult with the attending physician to determine whether the injury is the result of maltreatment. If the physician who examined the child is not associated with Child Protective Team (CPT), the investigator must immediately contact the local CPT office to share the examining physician's impressions and contact information with a case coordinator. CPT will determine whether or not to respond on-site to conduct additional medical evaluation of the child and/or determine the need for follow-up CPT services.[47]

The BSO is separately required to contact a CPT in person or by phone to discuss all reports of fractures in a child of any age.

During an investigation, BSO's assessment of the safety and perceived needs for the child and family "must include a face-to-face interview with the child, other siblings, parents, and *other adults in the household* and an onsite assessment of the child's residence."[48]

The BSO must review prior criminal history of parents and caretakers. If a CPI discovers the presence of an additional adult household member who was not screened by the Florida Abuse Hotline at the time of an initial report, then the CPI must, within 24 hours of such discovery, request:

- An abuse history from the Hotline. The Hotline must endeavor to produce this history within 24 hours of the CPI's request; and
- A criminal records check, including all call-out history, from the local criminal agency. The criminal record check must be initiated within 24 hours of the individual's identity and

[46] Section 39.201(5), F.S. (2016).
[47] Claimant Exhibit 4, *CFOP 170-5, 9-8, Child Protective Team Consultations* (April 4, 2016). Claimant Exhibit 65, Deposition of Chantale Bossous at 96-97.
[48] Section 39.301(7), F.S.. *Emphasis added*.

presence in the home becoming known to the investigator.[49]

CPI must attempt to contact the non-offending parent, and if unsuccessful, must make daily attempts thereafter.[50]

Present and Impending Danger Assessments

The BSO must conduct a present danger assessment during its investigation of reported maltreatment. A discovered bone fracture is considered maltreatment pursuant to DCF/BSO policy, but "accidental bone fractures that are not alleged to be inflicted or the result of inadequate supervision do not constitute "Bone Fracture" as maltreatment."[51]

Present danger which occurs during ongoing services may involve the parent or legal guardian in an in-home case, a relative or non-relative caregiver. The CPI should find a threatening family condition where there is a serious injury to an infant with no plausible explanation, and/or the perpetrator is unknown.[52]

In conducting the maltreatment index assessment, the CPI must verify his or her findings to establish by a preponderance of credible evidence that the broken bone was or was not the result of a willful act by a parent or caregiver. Such evidence can be documented through:[53]

- Interview of the Parents/Legal Guardians/Alleged Perpetrator
- Interview of Household Members/Witnesses/Collaterals (which include nonmaltreating parent)
- Analysis of reports and interviews from law enforcement.
- Assessment of the CPT.
- Obtaining and analyzing any medical reports to assess for prior injuries, location of the fracture, the number of fractures and the aging of fractures.

The CPI is required to conduct a separate Focus of Family Assessment of each family that reside together and share

[49] Rule 65C-29.003, Florida Administrative Code (June 5, 2016). Rule 65C-29.009, Florida Administrative Code (2014).
[50] Claimant Exhibit 65, Deposition of Chantale Bossous at 54-55.
[51] CFOP-4: Bone Fracture.
[52] CFOP 170-1, 2-2
[53] CFOP-4: Bone Fracture.

caregiving responsibilities, regardless of the household that is responsible for the maltreatment.[54]

BSO's Breach of Duty

Once a duty is found to exist, whether a defendant was negligent in fulfilling that duty is a question for the finder of fact.[55] A fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or child protective investigator in this instance, would have under the same or similar circumstances.[56]

The BSO failed to take the following steps, that a reasonable and prudent person would have:

- Contact CPT immediately (while at the hospital for M.N.'s investigation). Rather, CPI Henry contacted the CPT the next afternoon.
- Conduct a face-to-face interview with Mr. Santos, a known adult housemate. Additionally. CPI Henry did not seek to obtain Mr. Santos' abuse or criminal history.
- Contact or interview Mr. Nevarez.
- Interview any third-party witnesses, including Mr. Santos, any of the babysitters whose names Ms. Walsh provided, any of Ms. Walsh's friends or neighbors, or Ms. McClain.
- Speak directly with the reporting physician, Dr. Font. In particular, the BSO CPI was required to provide her name and contact information to the professionally mandated reporter within 24 hours of being assigned to the investigation.[57]
- Review M.N.'s medical file.

It would have been prudent, and in fact was required by Departmental policy and regulation, for the CPI to follow-up on these steps to shed more light on the incident and gather more information about the unexplained injuries to M.N. Instead, CPI Henry appears to have accepted Ms. Walsh's explanation of the significant injuries that the "Portuguese babysitters" were the perpetrators of the injury without

[54] CFOP 170-1, 2-3(4). (May 2016).
[55] *Yamuni, 529 So. 2d* at 262.
[56] *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").
[57] CFOP 170-5, Chapter 18-2, *Interviewing Collateral Contacts: Procedures*.

attempting to verify that finding through additional investigation.

Even though DCF has up to 60 days to complete an investigation,[58] the DCF failed to take precursory and required steps that an ordinary prudent CPI would have taken in this instance. For these reasons, I find that the DCF breached its duty of care.

Ms. Walsh contributed to this breach by failing to give Mr. Nevarez's contact information to CPI Henry. Additionally, Ms. Walsh contributed to this breach by failing to give a full accounting of who she left M.N. with for babysitting, specifically by failing to name Mr. Santos as one of M.N.'s caretakers.

Proximate Cause

In order to prove negligence, the claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.[59] Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."[60] To prove proximate cause, the plaintiff generally must submit evidence that "there is a natural, direct, and continuous sequence between BSO's negligence and [M.N.'s] death such that it can be reasonably said that but for BSO's negligence, the abuse to and death of [M.N.] would not have occurred."[61]

The undersigned finds that Ms. Walsh contributed to the BSO's negligent investigation of M.N.'s abuse by failing to be upfront with the CPI about (1) her children's relationship with their father; (2) her knowledge of Mr. Nevarez's contact information; and (3) her reliance on Mr. Santos for childcare. However, this misinformation could, and should have been overcome by adherence to the required investigative policies and procedures.

There is competent substantial evidence in the record to support a finding that BSO had a duty to reasonably investigate the complaint of child abuse. The BSO owed this

[58] Section 39.301(17), F.S. (2010).
[59] *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).
[60] *Amora*, 944 So. 2d at 431.
[61] *Id.*

duty to M.N. Specifically, BSO failed to appropriately identify the present danger to M.N. in home situation by failing to have a criminal background check run on Mr. Santos within 24 hours of the CPI's knowledge of his presence in M.N.'s household. If CPI Henry had , then the CPI would have been legally required to remove M.N. from Ms. Walsh and Mr. Santos' home, and Mr. Santos would not have had opportunity to inflict the injuries that ultimately caused M.N.'s death.

This failure foreseeably and substantially caused the injuries that resulted in M.N.'s death. The claimants presented evidence that there is a natural, direct, and continuous sequence between BSO's negligence and M.N.'s death such that it can reasonably be said that but for BSO's negligence, the injuries that resulted in M.N.'s death would not have occurred.

In the civil matter filed in the interest of M.N.'s estate, a jury found that BSO's inactions proximately caused M.N.'s death. "[T]he issue of proximate cause is generally a question of fact concerned with 'whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred.'"[62] In cases against the Department of Children and Families (DCF) having some similarities to this matter, the appellate court determined that "[t]he plaintiffs presented evidence that there is a natural, direct, and continuous sequence between DCF's negligence and [a child's] injuries such that it can be reasonably said that but for DCF's negligence, the abuse to [the child] would not have occurred."[63]

Damages

Finally, M.N.'s surviving parent suffered damages because of the BSO's negligence. Through the provision of personal testimony by Mr. Nevarez and Ms. McClain, supporting evidence and similar case law, claimants established that the jury verdict and final judgment of $2.61 million, and awarded costs of $88,258.50 for the Mr. Nevarez's mental pain and suffering,[64] as the father of M.N., is reasonable.

[62] *Amora*, 944 So. 2d at 431.
[63] *Id.*
[64] Section 768.21, F.S., authorizes damages for wrongful death.

The jury award and cost judgment awarding taxable costs in this matter is not excessive compared to jury verdicts in similar cases.

Sovereign Immunity
Although it appears that the BSO had insurance coverage at the time of the event, it is alleged by the BSO that their insurance coverage for this event has been denied, but no formal communication of the denial has been received from the insurance company. According to testimony provided at the hearing, the BSO has offered payment of $110,000 of the jury award to the claimant, but claimant had not received said payment as of the date of the hearing. Broward County has paid its share, $90,000 of the $2.61 million jury award. Therefore, if this bill passes, the BSO owes the claimant a total of $2,608,258.50.

Settlement with Personal Care Pediatrics
The claimants settled their claim against the doctors of Personal Care Pediatrics through a confidential settlement made before the trial. During the special master hearing, claimant's counsel testified that the settlement was for $100,000, which is being held in the claimant's trust account and has not been released to the claimants.

Settlement with Keisha Walsh
At the hearing conducted, the undersigned asked claimant's attorneys to detail the legal issues relating to Ms. Walsh's right to a portion of M.N.'s estate. The claimant's attorneys represented that the probate matter was ongoing, but that they would provide their pleadings as evidence of their position in the matter. Claimant provided the pleadings on February 14, 2025. The undersigned subsequently discovered that claimant's attorneys had entered into a settlement with Ms. Walsh, and asked that claimant's attorneys provide a copy of the settlement and any related documents. Claimant's attorneys responded with a narrative detailing that the party had settled with Ms. Walsh in the probate matter to pay Ms. Walsh $30,000, but no copy of the settlement agreement.

ATTORNEY FEES: Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The claimant's attorneys have submitted an affidavit to limit attorney fees to 20 percent of the total amount awarded under the claim bill and lobbying fees to 5 percent of the total amount awarded under the claim bill.[65]

RECOMMENDATIONS: Based upon the foregoing, the undersigned recommends that SB 30 be reported FAVORABLY.

Respectfully submitted,

Jessie Harmsen
Senate Special Master

cc: Tracy Cantella, Secretary of the Senate

[65] Claimant Exhibit 97, Sworn Affidavit of Stacie Schmerling.

By Senator Martin

33-00136B-25 202530__

A bill to be entitled

An act for the relief of the Estate of M.N. by the Broward County Sheriff's Office; providing for an appropriation to compensate the estate for injuries sustained by M.N. and her subsequent death as a result of the negligence of the Broward County Sheriff's Office; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on October 13, 2016, 5-month-old M.N. was brought to Northwest Medical Center in Broward County with a fever and intermittent leg pain, and

WHEREAS, diagnostic imaging revealed that M.N. had multiple fractures in her upper and lower extremities which were in different stages of healing, some of which were estimated to be approximately 3 weeks old, including fractures to her left tibia, left fibula, and left radius, and

WHEREAS, the treating physician observed bruising around M.N.'s left eye and discoloration on M.N.'s left wrist and learned that, at 3 months of age, M.N. had sustained a black eye, allegedly from falling off a couch, which resulted in a visit to Broward Health, and

WHEREAS, the treating physician consulted with a pediatric orthopedic specialist who, upon reviewing M.N.'s diagnostic imaging, advised that the fractures did not appear to be accidental and recommended that M.N.'s injuries be reported to the Department of Children and Families' (DCF) Abuse Hotline, and

WHEREAS, on October 13, 2016, the treating physician sent,

and DCF received, a report through DCF's Abuse Hotline describing M.N.'s injuries, which report was assigned to the Broward County Sheriff's Office (BSO) for investigation, as the BSO was the law enforcement agency charged with conducting child protective investigations in Broward County pursuant to s. 39.303, Florida Statutes, and

WHEREAS, that same day, upon receiving the abuse hotline report, a BSO child protective investigator (CPI) responded to Northwest Medical Center and observed the bruising around M.N.'s left eye and the discoloration on her left wrist and learned that, in addition to M.N.'s unexplained healing fractures, each of the aforementioned injuries occurred while M.N. was in the care or presence of her mother, K.W.; that the origins of the injuries were unexplained; and that K.W. had taken M.N. to different medical facilities to receive treatment for the child's injuries, and

WHEREAS, as the agency charged under s. 39.001, Florida Statutes, with conducting child protective investigations to ensure child safety and prevent further harm to children, the BSO owed M.N. a duty to ensure her safety and to protect her from further harm, and

WHEREAS, despite the CPI having actual knowledge that there was a pattern of unexplained injuries to M.N. while in K.W.'s care and that the child was in immediate need of a safety plan for her protection, the BSO allowed M.N. to be discharged from the hospital in the custody of K.W., and

WHEREAS, the BSO determined that M.N.'s father, C.N., was a nonoffending parent; however, K.W. had moved into the home of a male friend, Juan Santos, and, throughout September and October

2016, refused to respond to C.N.’s multiple requests to visit M.N., and

WHEREAS, the BSO failed to contact C.N., despite the fact that the BSO was required to do so to inform him of M.N.’s injuries and to discuss placement of the child, and

WHEREAS, the BSO failed to meet with Mr. Santos, to explore whether he was a caregiver to M.N., or to conduct a background check on him, and instead allowed M.N. to remain with K.W. and Mr. Santos, during which time M.N. was subject to further severe abuse, and

WHEREAS, on October 24, 2016, while the BSO’s child protective investigation remained open, M.N., at only 6 months of age, sustained life-threatening injuries, including a parietal skull fracture, severe brain and spinal cord injury, and extensive retinal hemorrhages, due to shaking and impact, and

WHEREAS, on October 24, 2016, M.N. was transported to the hospital, where she was declared brain-dead and placed on life support, and she died from her injuries on October 28, 2016, after being removed from life support, and

WHEREAS, on October 24, 2016, an additional abuse hotline report was received regarding M.N., and the case was again assigned to the BSO for investigation, and

WHEREAS, the BSO closed its investigation of M.N.’s case on July 17, 2017, with verified findings of bone fractures, internal injuries, threatened harm, and death, and

WHEREAS, following a jury trial, a verdict was rendered on August 16, 2023, in the amount of $4.5 million in favor of M.N.’s father, C.N., for his pain and suffering as a result

M.N.’s wrongful death, with 58 percent of the jury award, totaling $2.61 million, apportioned to the BSO, and

WHEREAS, the BSO admitted its negligence during the trial following the testimony of its own CPI, her supervisor, and other BSO employees, and

WHEREAS, the jury found that, but for the BSO’s negligence in failing to complete a thorough child protective investigation, ensure M.N.’s safety, and protect M.N. from further abuse and neglect, which was its primary duty, M.N. would not have died and C.N. would not have suffered damages arising out of the loss of his daughter, and

WHEREAS, $110,000 of the jury award was recovered from the BSO and $90,000 was recovered from Broward County, which total has exhausted the sovereign immunity limits set forth in s. 768.28, Florida Statutes, and

WHEREAS, the trial court entered a cost judgment awarding taxable costs in the amount of $88,258.50 to the Estate of M.N., to be paid by the BSO, and

WHEREAS, a total of $2,498,258.50, representing $2.41 million in excess of the sovereign immunity limits and $88,258.50 in costs awarded to the Estate of M.N., plus interest remains unpaid by the BSO, and

WHEREAS, the Estate of M.N. is responsible for payment of attorney fees and all remaining costs and expenses relating to this claim, subject to the limitations set forth in this act, and

WHEREAS, the claimant has been paid the statutory limit of $200,000 pursuant to s. 768.28, Florida Statutes, leaving a balance of $2.41 million plus taxable trial costs awarded in the

amount of $88,258.50 for a total claim of $2,498,258.50, plus interest, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Broward County Sheriff's Office is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $2,498,258.50 payable to the Estate of M.N. as compensation for injuries and damages sustained.

Section 3. It is the intent of the Legislature that all government liens, including Medicaid liens, resulting from the treatment and care of M.N. for the occurrences described in this act be waived and paid by the state.

Section 4. The amount paid by the Broward County Sheriff's Office pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to the Estate of M.N. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/20/25	SM	Favorable
3/25/35	JU	Favorable
3/28/25	CA	Pre-meeting
	RC	

March 20, 2025

The Honorable Ben Albritton
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 96** – Senator Bernard
HB 6521 – Representative Weinberger
Relief of Jacob Rodgers by the City of Gainesville

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $10,800,000.00. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A $11,000,000.00 JURY VERDICT REGARDING THE NEGLIGENCE OF THE CITY OF GAINESVILLE, WHICH RESULTED IN THE INJURY OF JACOB RODGERS.

FINDINGS OF FACT:

The Accident on October 7, 2015

On the evening of October 7, 2015, Jacob Rodgers was riding in a truck with his two friends, Hank Blackwell and Chantz Thomas. During the day, the trio worked as electrical helpers; during the evening, they were enrolled in Santa Fe Community College's training program to become certified electricians and attended night classes. On that particular evening, the three friends had carpooled from work to night school and were returning to retrieve their vehicles from work around 8 pm. The truck belonged to Mr. Blackwell, and Mr. Blackwell was driving. Mr. Thomas was in the passenger seat and Mr. Rodgers was in the back seat. Notably, Mr. Rodgers was not wearing his seatbelt.

Around the same time, William Stormant, a City of Gainesville[1] employee, was traveling home from work in his city-owned vehicle that was provided to him by his employer. Just before leaving, Mr. Stormant went to the on-site gym for the first time, and by the time he left, it was dark outside. On his way home, Mr. Stormant was going to drive by a substation[2] that he managed to check if the gate was closed. That particular site had a history of having construction materials stolen, so a gate was installed to curtail the thefts. Because it was so dark, Mr. Stormant could not see the gate from where he was driving, so he took a detour to drive close enough to see it. As he approached the gate, he saw it was locked and closed. Once he concluded his inspection, he turned around and left. While driving, Mr. Stormant took an interest in the LED lighting in the area[3] and ended up taking his focus off the road. Since he was not paying attention to his driving, he did not see the upcoming stop sign and he failed to stop.

Mr. Stormant was already in the middle of the intersection when he realized he missed the stop sign. Before he knew it, he collided with the truck being driven by Mr. Blackwell and caused it to flip. As a result, Mr. Rodgers was ejected from the vehicle. According to the accident report, the truck overturned an unknown number of times and landed upright on the grass shoulder.[4]

LITIGATION HISTORY:

A lawsuit was filed in February of 2016 with a claim of vicarious liability negligence on behalf of Jacob Rodgers against the City of Gainesville ("the City"). The Third Amended Complaint alleged that the City's employee, William Stormant—in the course and scope of his employment—negligently failed to obey a stop sign and caused his vehicle to collide with Hank Blackwell's truck, which led to Mr.

[1] Mr. Stormant works for the Gainesville Regional Utilities, which is under the City of Gainesville. *See* Day 1 part 2 (PM) Trial Testimony, 294.
[2] Mr. Stormant's working title was "Energy Measurement and Regulation Manager," which meant he was a "manager over the substation group, the relay group, the gas and electric metering group." *See* Day 1 part 2 (PM) Trial Testimony, 301.
[3] Mr. Stormant attended a meeting earlier in the day in which a participant discussed the new LED lights that were being installed, which is why he diverted his attention from the road to the lights. *Id.*
[4] *See* Crash Report Update 10-13-2015, 3.

Rodgers suffering "serious, life threatening and permanent physical and emotional injuries."

Pre-trial

The City argued that sovereign immunity barred Mr. Rodgers's claim because Mr. Stormant was not acting within the course and scope of his employment when he detoured to check the substation gate. It reasoned that Mr. Stormant was on his way home and had already concluded his workday, so he was not acting on behalf of his employer. The City filed a motion for summary judgment asserting this position and argued that it was not responsible for Mr. Stormant's negligent driving. In October of 2018, the trial court denied the City's motion, concluding that Mr. Stormant was acting within the course and scope of his duties at the time of the accident.[5,6]

Trial

Mr. Rodgers testified that, at the time of the accident, he was riding in the back seat of Mr. Blackwell's truck and was not wearing his seatbelt.[7] After he was ejected from the vehicle, he lost all memory from the moment of impact to when he awoke.[8] Upon regaining consciousness, he could no longer feel his lower body; it was completely and permanently paralyzed.[9] He also sustained a skull fracture; his ear was hanging off and had to be restitched to his head;[10] and his broken spine had to be stabilized with the surgical installation of a bar.[11] As a result of the accident, Mr. Rodgers was bound to a wheelchair.

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[5] *See* Order Denying COG's Motion for Final Summary Judgment, 2-3. The trial court acknowledged the City's assertion of the "going and coming rule" set forth in section 440.092 of the Florida Statutes. However, the court also applied the dual-purpose doctrine, an exception to that rule which allows for waiver of sovereign immunity when the employee's travel is serving a dual purpose, one of which being business in nature. In this case, Mr. Stormant was serving a business purpose when he detoured to check the substation and a personal purpose when he was returning to his drive home, so the trial court concluded that he was acting within the course and scope of his work duties.

[6] The City appealed the trial court's decision to the First District Court of Appeal. That court per curiam affirmed the trial court's decision.

[7] *See* Trial Transcript Day 2 PM Session, 181.

[8] *See Id.*

[9] *See* Trial Transcript Day 2 PM Session, 185.

[10] *See Id.*

[11] *See* Trial Transcript Day 2 PM Session, 187.

Mr. Rodgers also testified that he had to relearn how to do basic tasks, such as going to the bathroom; getting himself from a chair to a toilet seat; wheeling himself around for movement; getting dressed; and putting on shoes.[12] Mr. Rodgers also testified that he has to use a catheter to urinate because he cannot urinate normally.[13] This makes him susceptible to urinary tract infections, which requires medical treatment.[14] In order to perform a bowel movement, Mr. Rodgers explained that because he has no sensation in his lower body, he has to manually dig his waste out of his body.[15] Additionally, Mr. Rodgers testified that, because of the paralysis, the change in his circulation has made him susceptible to blood clots.[16] In order to prevent these, he has to physically massage his legs to push blood through his veins, keep his legs propped up, and constantly check them for heat or red spots; if he does not, any undetected blood clot could prove fatal.[17]

Mr. Rodgers testified that he was attending school to become an electrician, but he can no longer do that job because of his disability.[18]

William Stormant, the employee of the City, testified that he was on his way home from work when he detoured to check if a substation gate was locked, as he could not see it from the road because it was too dark.[19] After he confirmed the gate was closed, he resumed his drive home from his detour. Shortly after he resumed his drive, he noticed the new LED lights, which caught his attention and distracted him from the road.[20] Before he knew it, he had run a stop sign and entered the middle of an intersection.[21] He testified that he impacted the truck that Mr. Rodgers was a passenger in.[22]

The City presented the testimony of an accident reconstruction expert, who testified that, had Mr. Blackwell

[12] *See* Trial Transcript Day 2 PM Session, 188.
[13] *See* Trial Transcript Day 2 PM Session, 193.
[14] *See* Trial Transcript Day 2 PM Session, 198.
[15] *See* Trial Transcript Day 2 PM Session, 200-201.
[16] *See* Trial Transcript Day 2 PM Session, 213.
[17] *Id.*
[18] *See* Trial Transcript Day 2 PM Session, 171.
[19] *See* Day 1 part 2 (PM) Trial Testimony, 297.
[20] *See* Day 1 part 2 (PM) Trial Testimony, 301.
[21] *Id.*
[22] *Id.*

been going the speed limit, the accident would not have occurred.[23] He presented a simulation that he relied on to come to this conclusion.[24]

The City also presented the testimony of a biomechanics expert, who testified that, had Mr. Rodgers been wearing his seatbelt, he would not have been ejected from the truck and would have sustained only light injuries.[25]

The City maintained its position that sovereign immunity barred Mr. Rodgers's claim and argued that the amount he was asking for should be reduced by the fact that Mr. Rodgers was not wearing his seatbelt and that Mr. Blackwell was going approximately 10 mph in excess of the speed limit at the time of the accident.[26]

The jury deliberated and entered a verdict in favor of Mr. Rodgers. The jury found that Mr. Stormant was "a legal cause of loss, injury, or damage to" Mr. Rodgers.[27] Due to confusion with the jury instructions,[28] the jury awarded Mr. Rodgers $120,000,000.00.

The City filed two post-trial motions in response to this verdict: a motion for new trial and alternative motion for remittitur, and a motion to set aside the verdict. The trial court denied both, but granted the motion for remittitur, reducing Mr. Rodgers's overall award to $18,319,181.20. Both parties appealed the final judgment. The appellate court affirmed the issue of damages and expressly rejected the City's argument that Mr. Stormant was not acting in the course and scope of his employment at the time of the accident but remanded the case to the trial court to conduct a new trial on the jury instruction issue and the allocation of fault.[29]

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[23] Trial Transcript – Day 4 AM Session, 12 (39).
[24] *Id.*
[25] Trial Transcript – Day 4 AM Session, 22 (78).
[26] Mr. Blackwell estimated that he was going 50 miles an hour at the time of the accident. However, the computer in his car showed he was going nine or ten miles an hour over the 45-mph speed limit. *See* Trial Transcript – Day 2 AM Session, 42.
[27] *See* 2021-05-06 - Verdict.
[28] The jury determined that Mr. Rodgers was not a legal cause of his injuries because not wearing a seatbelt in the back seat is not a crime in Florida. Therefore, it concluded that Mr. Rodgers not wearing a seatbelt was not a legal cause of his injury because he was doing nothing illegal that contributed to his damages.
[29] The appellate court ordered a new trial and directed the trial court to instruct the jury that "Stormant was negligent and the City is liable for Stormant's actions." *See City of Gainesville v. Rodgers*, 377 So. 3d 626, 634 (Fla. 1st DCA 2023); 2023-11-19 Opinion-Disposition, 11.

In lieu of a new trial, the parties agreed to settle the case.[30] Both parties agreed to a judgment in the amount of $11,000,000.00, but both parties reserved all rights with respect to a legislative claim bill.[31] The City included, and Mr. Rodgers agreed to, the provision that: "The City/GRU does not waive any defenses of sovereign immunity and does not agree to execution of judgment beyond the statutory cap provided in FS 768.28."[32]

CONCLUSIONS OF LAW:

The claim bill held on February 28, 2025, was a *de novo* proceeding to determine whether the City of Gainesville is liable in negligence for damages caused by its employee, William Stormant, acting within the scope of his employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Under the legal doctrine of *respondeat superior*, Sarasota County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Being that Ms. Parnell was operating a parks-and-recreation vehicle in the course and scope of her employment at the time of the collision, and because the vehicle was owned by Sarasota County, the County is responsible for negligence committed by Ms. Parnell.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) – damages – actual harm.[33]

[30] *See* Settlement Agreement with Plaintiff's Signature.
[31] *Id.*
[32] *Id.*
[33] *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2003).

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff.[34] The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.

In this case, the City of Gainesville's liability depends on whether Mr. Stormant negligently operated his city-owned vehicle and whether that negligent operation caused Mr. Rodgers's resulting injuries.

Duty
A legal duty may arise from statutes or regulations; common law interpretations of statutes of regulations; other common law precedent; and the general facts of the case.

In this case, Mr. Stormant was responsible for exercising the duty of reasonable care to others while driving his city-owned vehicle.[35] Any person operating a vehicle within the state "shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section."[36]

Breach
The undersigned finds that Mr. Stormant breached the duty of care owed to Mr. Rodgers.

Mr. Stormant testified that he was distracted by the LED lights and was lost in thought while driving. As a result, he failed to adhere to the stop sign and drove into the middle of the intersection.

Causation
Mr. Rodgers's injuries were the natural and direct consequence of Mr. Stormant's breach of his duty. He was

[34] *Alachua Lake Corp. v. Jacobs*, 9 So. 2d 631, 632 (Fla. 1942).
[35] *Gowdy v. Bell* 993 So. 2d 585, 586 (Fla. 1st DCA 2008) ("The operator of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path.").
[36] Mr. Stormant was cited for violating section 316.123(2)(a), of the Florida Statutes, which provides that "every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line." *See* Exhibit #38 (Deposition Exhibits), 2; *see* section 316.123(2)(a), F.S.

ejected from the vehicle and sustained major injuries as a result of Mr. Stormant running the stop sign and colliding with Mr. Blackwell's truck. The City of Gainesville argues that Mr. Stormant was not acting within the course and scope of his employment because he was driving home, but the undersigned finds that the employee was returning to his route home from his detour, which he took solely for a business purpose. Therefore, he was acting within the course and scope of his duties, and the City of Gainesville, as the employer, is liable for damages caused by its employee's negligent act.

Damages

A plaintiff's damages are computed by adding these elements together:

Economic Damages

- Past medical expenses
- Future medical expenses

Non-Economic Damages

- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

As a result of the accident, Mr. Rodgers can no longer feel his lower body; it is completely and permanently paralyzed.[37] He also sustained a skull fracture; his ear was hanging off and had to be restitched to his head;[38] and his broken spine had to be stabilized with the surgical installation of a bar.[39] Mr. Rodgers is also bound to a wheelchair. Mr. Rodgers's attorney provided a breakdown of what the claim bill award would be used for, should this bill pass.[40] $4,814.57 would be used to pay for past medical visits, and $285,683.88 would be used to pay off medical liens.[41] $3,210,355.62 would be used to pay for attorney fees and costs.[42]

[37] *See* Trial Transcript Day 2 PM Session, 185.
[38] *See Id.*
[39] *See* Trial Transcript Day 2 PM Session, 187.
[40] *See* Rodgers Cost Breakdown, 1.
[41] *Id.*, 2.
[42] *Id.*

Mr. Rodgers would net $7,789,644.38.[43] The claimant's attorney explained that $3,900,000.00[44] would be used to "fund a medical annuity that will provide lifetime medical health benefits for his future medical expenses (mostly for home health care and hospitalization expenses)," $1,950,000.00 would purchase "tax free municipal bonds to supplement his income moving forward in case of future job loss[45] (future loss earnings)," and $1,000,000.00 would "establish an investment portfolio to pay for loss of household services and equipment."[46] The claimant's attorney classified these expenses as past and future economic losses.[47] For non-economic damages, his attorney stated that $950,000.00 would be invested in a "general investment fund managed for vacations and enjoyment of life."[48]

The City contests these damages in the entirety, arguing that Mr. Stormant was not acting within the course and scope of his employment. In the alternative, the City argues that Mr. Rodgers was not wearing his seatbelt and more fault should be assigned to him. Specifically, the City believes the "most fair allocation of fault for the spinal cord injury is 10% to Mr. Stormant, 10% to Mr. Blackwell, and 80% to Mr. Rodgers."[49]

Comparative Fault
Florida's comparative fault statute, section 768.81, F.S., applies to this case because Mr. Rodgers, Mr. Blackwell, and Mr. Stormant were all three at fault for Mr. Rodgers's injuries.

Mr. Rodgers was at fault for:

- Failing to wear his seat belt.

Mr. Blackwell was at fault for:

- Excessive speeding.

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[43] *Id.*
[44] *See* Amended Catastrophic Life Care Plan, 40. Mr. Rodgers submitted a life care plan, in which Dr. Christopher Leber estimated Mr. Rodgers's future medical costs to be $4,759,035.37. These costs included physician services, routine diagnostics, medications, laboratory studies, rehabilitation services, equipment and supplies, nursing and attendant care, and acute care services.
[45] Mr. Rodgers also presented the report of Andrea Bradford, an Associate Vocational Specialist, in which she explained that Mr. Rodgers's lost wages are valued somewhere between $392,040 and $576,840. *See* Amended Vocational Assessment – J. Rodgers, 36-37.
[46] *See* SB 96 Post-Hearing Follow-up Email (March 11, 2025).
[47] *Id.*
[48] *Id.*
[49] *Id.* (March 3, 2025).

Mr. Stormant was at fault for:

- Violating section 316.123(2)(a), F.S., by failing to stop at a clearly marked stop sign;
- Failure to operate his vehicle with reasonable care.

While all three were partially at fault in this matter, Mr. Stormant's negligence far outweighs that of Mr. Rodgers and Mr. Blackwell; the undersigned finds there was sufficient evidence presented to prove the collision ultimately happened because Mr. Stormant ran the stop sign.

The City believes the "most fair allocation of fault for the spinal cord injury is 10% to Mr. Stormant, 10% to Mr. Blackwell, and 80% to Mr. Rodgers."[50] The City argues that 80% of fault should be allocated to Mr. Rodgers because he was not wearing his seatbelt, and his injuries were worsened by his negligent act. However, the undersigned finds that the City's suggested allocation fails to take into account that the mere fact that Mr. Rodgers was not wearing a seatbelt, alone, did not cause him to be ejected from the vehicle.[51] The collision, caused by Mr. Stormant's negligence, was the cause.[52] As such, the undersigned finds that assigning 80% of fault to Mr. Rodgers for his failure to wear a seatbelt would be unreasonable.

The settlement agreement, which was entered into by both parties, reduced the original award of $18,319,181.20 to $11,000,000.00[53] in order to avoid a retrial. While the Legislature is not bound by any settlement agreement, it is worthy of note that it reduced the original award amount by

[50] *Id*.
[51] In support of his position, Mr. Rodgers testified that he habitually does *not* wear his seatbelt in the back seat, and he has never been in an accident before. *See* Day 2 part 2 (PM), 209.
[52] The City presented the testimony of an accident reconstructionist. *See* Day 4 part 1 (AM), 4 (7). Counsel for the City listed three "ingredients" in the case to him: that Mr. Stormant ran a stop sign, Mr. Blackwell was speeding, and Mr. Rodgers was not wearing his seatbelt. *Id.*, 18 (63). The witness was asked "if you take out any of those ingredients, does Mr. Rodgers get ejected from the vehicle?" *Id.* The witness replied "I don't think the ejection happens." *Id.* He continued by stating "his occupant space, by and large, is intact after the crash. He's going to stay in the truck, that much I think is true." *Id.* The undersigned finds this testimony unpersuasive, as he erroneously assumes the crash would have happened regardless of whether Mr. Rodgers wore a seatbelt. To this point, the witness was previously asked "It took somebody to blow through a stop sign and hit him to cause the forces and the flipping of the truck for him to be ejected, correct?" *Id.*, 14 (49). The witness replied "Correct." *Id.* It is undisputed that Mr. Rodgers's choice to not wear his seatbelt worsened his injuries, but him not wearing a seatbelt—that fact by itself—did not eject him from the truck, the collision did.
[53] This is also the same amount asked for in the claim bill.

40%. This agreement, in effect, assigns 40% of fault to Mr. Rodgers in exchange for both parties avoiding a retrial. The undersigned finds that assigning 40% of fault to Mr. Rodgers is reasonable, and, based on the above discussion of damages, the $11,000,000.00 request reflects that appropriate allocation of fault.

Based on the foregoing, the undersigned finds:

- That Mr. Rodgers presented evidence that was sufficient to prove he suffers from a spinal cord injury and requires current and future treatment for that injury;
- The $11,000,000.00 requested in the claim bill is reasonable and represents a reasonable allocation of fault to Mr. Rodgers.

IMPACT ON BUDGET:

The undersigned asked for the impact on the budget and the City responded: "GRU can pull together up to $10.8 million in cash for a claim bill, but GRU has not budgeted any money for a claim bill. If the Legislature passes a bill for the $10.8 million amount requested by Claimant, that would equal roughly one-third of the electric system's operating cash, and would hinder the system's ability to pay its bills. Thus, GRU would need to make up the money by pulling from its reserves, cutting the amount budgeted for paying on existing debt and for its capital improvement plan, or taking on new debt."[54]

ATTORNEY FEES:

Attorney fees may not exceed 25 percent of the amount awarded, and lobbying fees will be limited to 5 percent of any amount awarded by the Legislature.[55] Counsel for Rodgers totaled his attorney fees to $2,612,500.00 and the lobbyist fees to $137,500.00, both of which fall within the statutory limits.[56]

RECOMMENDATIONS:

Based on the reasons above, the undersigned recommends that Senate Bill 96 be reported FAVORABLY.

[54] *See* SB 96 Post-Hearing Follow-up Email (March 6, 2025).
[55] Section 768.28, F.S.
[56] *See* Rodgers Cost Breakdown, 1.

Respectfully submitted,

Oliver Thomas
Senate Special Master

cc: Secretary of the Senate

By Senator Bernard

24-00515-25 202596__

A bill to be entitled

An act for the relief of Jacob Rodgers by the City of Gainesville; providing for an appropriation to compensate Jacob Rodgers for injuries sustained as a result of the negligence of an employee of the City of Gainesville; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, on October 7, 2015, Jacob Rodgers was a passenger in a vehicle when it was struck by a vehicle owned by the City of Gainesville, d/b/a Gainesville Regional Utilities, and operated by an employee, and

WHEREAS, the City of Gainesville, d/b/a Gainesville Regional Utilities, employee ran a stop sign and struck the side of the vehicle occupied by Mr. Rodgers, and

WHEREAS, Mr. Rodgers, who was 20 years old at the time, sustained catastrophic injuries, including spinal fractures that resulted in Mr. Rodgers becoming a paraplegic, which will require him to receive supervised medical care, home health care, future medical care, and other services in the future, and

WHEREAS, Mr. Rodgers brought suit against the City of Gainesville, d/b/a Gainesville Regional Utilities, in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County under case number 2016-CA-000659, and

WHEREAS, the suit was tried before an Alachua County jury, and the jury found the City of Gainesville 100 percent at fault and assessed total damages of $120 million, and

WHEREAS, the trial court ordered a remittitur, which

resulted in a final judgment of $18,319,181.20, and

WHEREAS, the City of Gainesville appealed the final judgment, resulting in Mr. Rodgers agreeing to the remittitur of $18,319,181.20 and the City of Gainesville obtaining a new trial on the issue of comparative negligence of Mr. Rodgers, and the damage award of $18,319,181.20 was not reversed by the trial court, and

WHEREAS, the parties mediated the case pursuant to a court order and reached a settlement agreement that the City of Gainesville, d/b/a Gainesville Regional Utilities, would consent to a final judgment of $11 million, and

WHEREAS, the Gainesville Regional Utilities Authority board adopted and approved the settlement agreement, and

WHEREAS, the City of Gainesville paid the statutory limit of $200,000 under s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Gainesville is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $10.8 million payable to Jacob Rodgers as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Gainesville pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and

damages to Jacob Rodgers. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 140
INTRODUCER:	Education Pre-K -12 Committee and Senator Gaetz
SUBJECT:	Charter Schools
DATE:	March 28, 2025 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sabitsch	Bouck	ED	**Fav/CS**
2.	Hackett	Fleming	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 140 modifies procedures regarding charter school conversions and establishes "job engine" charter schools. The bill also provides additional requirements for district school boards related to the acquisition and disposal of property. Specifically, the bill:

- Provides that a charter school application submitted by parents for a conversion charter school must be made specifically by parents of children enrolled in the school to be converted, and removes the required demonstration of support of teachers.
- Allows a municipality to apply to establish a "job engine" new or conversion charter school and allows an enrollment preference for child of an employee of a job producing entity that has been identified.
- Includes charter schools in the Workforce Development Capitalization Incentive Grant Program and specifies that the grant program is for grades 6-12. Additionally, the grant program is required to give priority to an application from a "job engine" charter school.
- Sets requirements of a district school board regarding rental or leasing fees for conversion charter schools and removal of inventoried property in facilities.
- Provides planning and reporting requirements for district school boards when acquiring real property.
- Sets prohibitions on acquisition of real property by district school boards and requires disposal of surplus real property when there is declining enrollment.
- Provides priorities for the disposal of real property.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida's Charter Schools

Charter schools are tuition-free public schools created through an agreement or "charter" that provides flexibility relative to regulations created for traditional public schools. During the 2022-2023 school year, 382,367 students were enrolled in 726 charter schools in 46 school districts.[1]

Charter schools are open to all students residing within the district; however, charter schools are allowed to target students within specific age groups or grade levels, students considered at-risk of dropping out or failing, students wishing to enroll in a charter school-in-the-workplace or charter school-in-a-municipality, students residing within a reasonable distance of the school, students who meet reasonable academic, artistic or other eligibility standards established by the charter school, or students articulating from one charter school to another.[2]

Charter schools are created when an individual, a group of parents or teachers, a business, a municipality, or a legal entity applies to the school district; the school district approves the application; the applicants form a governing board that negotiates a contract with the district school board; and the applicants and district school board agree upon a charter or contract. The district school board then becomes the sponsor of the charter school. The negotiated contract outlines the expectations of both parties regarding the school's academic and financial performance.[3]

A charter school must be organized as, or be operated by, a nonprofit organization. The charter school may serve at-risk students, or offer a specialized curriculum or core academic program, provide early intervention programs, or serve exceptional education students.[4]

All charter applicants must prepare and submit an application on a model application form prepared by the Department of Education, which:[5]

- Demonstrates how the school will use the guiding principles.
- Provides a detailed curriculum.
- Contains goals and objectives for improving student learning.
- Describes the separate reading curricula and differentiated strategies.
- Contains an annual financial plan.

A school board is required to review all charter school applications and, within 90 days of receipt, approve or deny the application.[6]

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[1] Florida Department of Education, Office of Independent Education & Parental Choice, *Fact Sheet Florida's Charter Schools* (October 2023), *available at* https:https://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2022.pdf.
[2] Florida Department of Education, *Frequently Asked Questions (Charter Schools)*, https://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited Mar. 26, 2025). *See also* s. 1002.33(10), F.S.
[3] Section 1002.33(6), F.S.
[4] *Id.*
[5] *Id.*
[6] *Id.*

Conversion Charter Schools

Florida law allows for applications for conversion charter schools, which are converted from district public schools.[7] The school must have operated for at least two years as a traditional public school (including a school-within-a-school) before conversion. Application for a conversion may be made by a parent, teacher, principal, district school board or school advisory council, but must be approved by a majority of the teachers employed at the school and a majority of the parents whose children are enrolled in the school. A majority of the parents must participate in the vote.[8]

The charter for a conversion charter school must identify the alternative arrangements that will be put in place to serve current students that choose not to attend the school after it is converted. Conversion charter schools are not eligible for charter school capital outlay funding if the conversion charter school operates in facilities provided to them by the school district.[9]

Charter Schools-in-a-Municipality

A municipality that possesses a charter of incorporation may be granted a charter "school-in-a-municipality." The charter school-in-a-municipality must enroll students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment and enroll students according to the racial/ethnic balance provisions described in law. Any portion of the land and facility used for a public charter school is exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.[10]

A charter school-in-a-municipality may give enrollment preference to a resident or employee of a municipality that operates the charter school or allows the charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.[11]

A charter school may limit the enrollment process to target students enrolling in a charter school-in-a-municipality.[12]

Educational Facilities

Requirements for district school boards are provided in Florida law[13] governing the leasing of:

- School district-owned land, facilities and educational plants to outside persons or entities.[14]
- Educational plants, ancillary please and auxiliary facilities by school districts.[15]
- Existing buildings or space within existing buildings originally constructed or used for purposes other than education.[16]

[7] Section 1002.33(3)(b), F.S.
[8] Florida Department of Education, Frequently Asked Questions (Charter Schools), https://www.fldoe.org/schools/school-choice/charter-schools/charter-school-faqs.stml (last visited Mar. 26, 2025).
[9] *Id.*
[10] Section 1002.33(15(c), F.S.
[11] Section 1002.33(10)(d)4.b., F.S.
[12] Section 1002.33(10)(e)3., F.S.
[13] Section 1013.15, F.S.
[14] Section 1013.15(1), F.S.
[15] Section 1013.15(2), F.S.
[16] Section 1013.15(4), F.S.

District school boards are allowed to lease any land, facilities, or educational plants owned by the district to any person or entity for terms and rent if the board determines doing so to be in the best interest of the district. A lease may provide for the optional or binding purchase of the land, facilities, or educational plants by the lessee if the board determines the transaction to be in the interest of the district. All leases or lease-purchase agreements must be approved by the district school board at a public meeting and the final copy of the proposed agreement must be available for inspection and review by the public.[17]

District school boards are allowed to lease-purchase educational plants, ancillary plants, and auxiliary facilities and sites for use by the district.[18] The lease-purchase must comply with specific Florida law[19] and must be advertised through a competitive bid process. The lease-purchase is required to be funded using current funds or other funds specifically allowed in law. Current law also allows lease-purchases through direct-support organizations, nonprofit organizations or a consortium of district school boards if the purchase would best serve the public interest.[20] The terms of any lease-purchase agreement, including the initial term and renewals cannot exceed the useful life of the facility or site or thirty years, whichever is shorter. A lease-purchase agreement entered into by a district school board is not permitted to constitute a debt, liability, or obligation of the state or that board.[21]

A district school board may dispose of any land or real property to which the board holds title which is determined to be unnecessary for educational purposes as recommended in an educational plant survey. The district school board must take diligent measures to dispose of educational property only in the best interests of the public.[22]

Current law provides requirements for charter school facilities that stipulate what restrictions or standards the facilities are required to meet.[23] In general, charter school facilities are required to meet Florida building codes but are exempt from the state requirements for educational facilities. Local governments are not permitted to impose certain requirements that are more stringent than the state requirements for educational facilities.[24] Charter schools are also provided with exemptions from certain taxes and permit fees.[25]

If a district school board facility or property is available because it is surplus, marked for disposal, or unused, current law requires that the property be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the sponsor cannot sell or dispose of the property without written permission. Similarly, for an existing public school converting to charter status, no rental or leasing fee for the existing facility or for the property normally inventoried to the conversion

[17] Section 1013.15(1), F.S.
[18] Section 1013.15(2)(b), F.S.
[19] Section 1013.37, F.S.
[20] Section 1013(2)(b)1., F.S.
[21] Section 1013(2)(b)3., F.S.
[22] Section 1013.28(1)(a), F.S.
[23] Section 1002.33(18), F.S.
[24] Section 1002.33(18), F.S.
[25] Section 1002.33(18)(c) and (d), F.S.

school can be charged to the parents and teachers organizing the charter school. The charter school is required to agree to reasonable maintenance provisions to maintain the facility.[26]

Workforce Development

The Workforce Development Capitalization Incentive Grant Program addresses the need for school districts and Florida College System institutions to be able to respond to emerging local or statewide economic development needs and is critical to the workforce development system. This grant program provides grants to school districts and Florida College System institutions to fund costs associated with the creation or expansion of career and technical education programs that lead to industry certifications included on the Florida Career and Professional Education Act or CAPE Industry Certification Funding List.[27]

III. Effect of Proposed Changes:

Charter School Conversions

CS/SB 140 modifies s. 1002.33, F.S., to require that parents who apply for a conversion charter school must be parents whose children are enrolled in the existing public school. The bill removes the requirement that 50 percent of the teachers employed at the school demonstrate support for the conversion, which may provide an easier path to a charter conversion. Additionally, the bill specifies that a college or state university that denies an application for a conversion charter is subject to the same requirements as a district school board.

The bill creates a new preference category for charter school enrollment for the children of employees who are employed at a job producing entity that has been identified by a municipality operating a "job engine" charter school.

Job Engine Charter Schools

The bill establishes in s. 1002.33, F.S., "job engine" charter schools allowing a municipality to apply to operate a "job engine charter" school with the stated purpose to attract job-producing entities to the municipality. The bill requires each municipality operating a "job engine charter" school to:

- Make available an annual report to the sponsor that documents investments made to attract and maintain job-producing entities.
- Include career education opportunities.
- Provide provisions for exceptional student education.
- Use sufficient security technology to secure facilities.
- Accept responsibility for all debts incurred by the school.

The bill creates a new preference category for charter school enrollment for the children of employees who are employed at a job producing entity that has been identified by a municipality operating a "job engine" charter school.

[26] Section 1002.33(18)(e), F.S.
[27] Section 1011.801, F.S.

The bill modifies s. 1011.801, F.S., to include charter schools in the Workforce Development Capitalization Incentive Grant program and specifies that the grant program includes grades 6-12. Additionally, the bill requires that the Department of Education include "job engine" charter schools in the priorities for the grants.

District School Board Property

The bill modifies s. 1002.33, F.S. to include principals, school advisory councils and teachers organizing a charter school regarding not charging rental or leasing fees for existing facilities or normally inventoried property. The bill also requires the municipality to negotiate rental or leasing fees with the district school board and prohibits the removal of normally inventoried property from the school.

The bill modifies s. 1013.15, F.S., to require district school boards to approve a 5-year plan prior to occupying real property that addresses specific elements such as enrollment growth, demographic shifts, and changes in curriculum. If enrollment in the district has declined by more than 4 percent in the preceding 5-year period, the district is required to demonstrate actual or projected 5-year growth in the specific area of the district prior to acquiring real property to meet a need in that area. If the overall decline in enrollment is more than 4 percent the district school board is required to dispose of real property in the areas of the district where there is declining enrollment.

The bill requires the school board to dispose of surplus real property if doing so is in the best interest of the public and sets priorities regarding disposal of surplus property to specify affordable housing for teachers, first responders, military servicemembers, charter school facilities, and local recreational facilities.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact is undetermined if any.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.33, 1011.801 and 1013.15.

IX. Additional Information:

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

CS by Education Pre-K – 12 on March 17, 2025:
The committee substitute reinstates language removed in the bill to allow district school boards, principals, teachers and school advisory councils as individuals or groups that can make application for a conversion charter school, and allows a municipality to establish a "job engine" conversion charter school. The amendment also:

- Includes colleges and state universities in requirements for sponsors denying the application for a conversion charter school.
- Adds to charter school allowable enrollment preferences students who may attend a charter school that are the children of employes of the job producing entity of the "job engine" charter school.
- Modifies the provision that a municipality seeking a "job engine" charter school to include a requirement to include career education opportunities and removes a provision that prohibited participation in athletics by first-year students.

The amendment also includes charter schools in the provisions for the Workforce Development Capitalization Incentive Grant Program, specifies grades 6-12 for eligibility for the grant program, and includes in the grant priority an application from a "job engine" charter school.

The amendment modifies the provision of the bill regarding 5-year facilities plans from submitting a plan to approval of a plan by a district school board and modifies the requirement for school districts acquiring real property and for the disposal of real property.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senator Gaetz

581-02509-25 2025140c1

A bill to be entitled

An act relating to charter schools; amending s. 1002.33, F.S.; revising which persons or entities may apply for a conversion charter school; requiring a college or state university to provide a written notice of denial for denying an application for a conversion charter school; revising eligible students who may receive an enrollment preference; authorizing a municipality to apply for a charter that it may designate as a job engine charter under certain conditions; providing the purpose of a job engine charter school; providing requirements for a job engine charter; prohibiting a district school board from charging a rental or leasing fee for a conversion school; requiring a municipality to negotiate certain rental or leasing fees; prohibiting certain property from being removed; amending s. 1011.801, F.S; revising entities that are included in the Workforce Development Capitalization Incentive Grant Program to include charter schools; requiring the State Board of Education to consider applications from a job engine charter school for rulemaking purposes; amending s. 1013.15, F.S.; requiring a district school board to approve a 5-year plan before occupying purchased or acquired real property; requiring a school board to dispose of real property in certain areas of the district if enrollment in those areas has declined in the preceding 5-year period; requiring that surplus real property be given priority for conversion for

specified purposes; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3), paragraph (d) of subsection (10), paragraph (c) of subsection (15), and paragraph (e) of subsection (18) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(3) APPLICATION FOR CHARTER STATUS.—

(b) An application for a conversion charter school must ~~shall~~ be made by the district school board, the principal, teachers, parents whose children are enrolled at the school, or ~~and/or~~ the school advisory council at an existing public school that has been in operation for at least 2 years before ~~prior to~~ the application to convert. A public school-within-a-school ~~that is~~ designated as a school by the district school board may also apply ~~submit an application~~ to convert to charter status. A municipality seeking to attract job-producing entities by establishing a job engine charter school pursuant to paragraph (15)(c) may apply to the district school board to convert an existing public school to a charter school. An application submitted proposing to convert an existing public school to a charter school must ~~shall~~ demonstrate the support of at least ~~50 percent of the teachers employed at the school and~~ 50 percent of the parents voting whose children are enrolled at the school, provided that a majority of the parents eligible to vote participate in the ballot process, according to rules adopted by the State Board of Education. A district school board, college,

or state university that denies ~~denying~~ an application for a conversion charter school shall provide notice of denial to the applicants in writing within 10 days after the meeting at which the district school board denied the application. The notice must articulate in writing the specific reasons for denial and must provide documentation supporting those reasons. A private school, parochial school, or home education program is ~~shall~~ not ~~be~~ eligible for charter school status.

(10) ELIGIBLE STUDENTS.—

(d) A charter school may give enrollment preference to the following student populations:

1. Students who are siblings of a student enrolled in the charter school.

2. Students who are the children of a member of the governing board of the charter school.

3. Students who are the children of an employee of the charter school.

4. Students who are the children of:

a. An employee of the business partner of a charter school-in-the-workplace established under paragraph (15)(b) or a resident of the municipality in which such charter school is located; or

b. A resident or employee of a municipality that operates a charter school-in-a-municipality pursuant to paragraph (15)(c) or allows a charter school to use a school facility or portion of land provided by the municipality for the operation of the charter school.

5. Students who have successfully completed, during the previous year, a voluntary prekindergarten education program

under ss. 1002.51-1002.79 provided by the charter school, the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board.

6. Students who are the children of an active duty member of any branch of the United States Armed Forces.

7. Students who attended or are assigned to failing schools pursuant to s. 1002.38(2).

8. Students who are the children of a safe-school officer, as defined in s. 1006.12, at the school.

9. Students who transfer from a classical school in this state to a charter classical school in this state. For purposes of this subparagraph, the term "classical school" means a traditional public school or charter school that implements a classical education model that emphasizes the development of students in the principles of moral character and civic virtue through a well-rounded education in the liberal arts and sciences which is based on the classical trivium stages of grammar, logic, and rhetoric.

10. Students who attend a job engine charter school under paragraph (15)(c) who are the children of an employee of a job-producing entity identified by the municipality in the annual job engine charter report.

(15) CHARTER SCHOOLS-IN-THE-WORKPLACE; CHARTER SCHOOLS-IN-A-MUNICIPALITY.—

(c)1. A charter school-in-a-municipality designation may be granted to a municipality that possesses a charter; enrolls students based upon a random lottery that involves all of the children of the residents of that municipality who are seeking enrollment, as provided for in subsection (10); and enrolls

students according to the racial and ethnic ~~racial/ethnic~~ balance provisions described in subparagraph (7)(a)8. When a municipality has submitted charter applications for the establishment of a charter school feeder pattern, consisting of elementary, middle, and senior high schools, and each individual charter application is approved by the sponsor, such schools shall then be designated as one charter school for all purposes listed pursuant to this section. Any portion of the land and facility used for a public charter school shall be exempt from ad valorem taxes, as provided for in s. 1013.54, for the duration of its use as a public school.

2. A municipality may seek a charter under subparagraph 1. from a sponsor in subsection (5). If granted, such a charter may be designated a job engine charter. The purpose of a job engine charter school is to attract job-producing entities to the municipality. The charter must require the municipality to:

a. Provide an annual report to the sponsor which will be made publicly available and include investments made to attract and maintain job-producing entities, such as private sector industries, in the municipality.

b. Include career education opportunities.

c. Include the provision of exceptional student education administration services, pursuant to subparagraph (20)(a)1.

d. Require the use of sufficient security technology to ensure a secure facility.

e. Notwithstanding paragraph (8)(e), accept responsibility for all debts incurred by the job engine charter school.

3. A job engine charter school may give enrollment preferences pursuant to subparagraph (10)(d)10.

(18) FACILITIES.—

(e) If a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district. A charter school receiving property from the sponsor may not sell or dispose of such property without written permission of the sponsor. Similarly, for an existing public school converting to charter status, a district school board may not charge ~~no~~ rental or leasing fees ~~fee~~ for the existing facility or for the property normally inventoried to the conversion school ~~may be charged by the district school board~~ to the parents ~~and~~, principal, school advisory council, or teachers organizing the charter school. The municipality must negotiate rental or leasing fees with the district school board. Property normally inventoried to the school may not be removed. The charter school shall agree to reasonable maintenance provisions in order to maintain the facility in a manner similar to district school board standards. The Public Education Capital Outlay maintenance funds or any other maintenance funds generated by the facility operated as a conversion school shall remain with the conversion school.

Section 2. Section 1011.801, Florida Statutes, is amended to read:

1011.801 Workforce Development Capitalization Incentive Grant Program.—The Legislature recognizes that the need for school districts, charter schools, and Florida College System institutions to be able to respond to emerging local or statewide economic development needs is critical to the

workforce development system. The Workforce Development Capitalization Incentive Grant Program is created to provide grants to school districts, charter schools, and Florida College System institutions to fund some or all of the costs associated with the creation or expansion of career and technical education programs that lead to industry certifications included on the CAPE Industry Certification Funding List. The programs may serve secondary students or postsecondary students if the postsecondary career and technical education program also serves secondary students in grades 6-12.

(1) Funds awarded for a workforce development capitalization incentive grant may be used for instructional equipment, laboratory equipment, supplies, personnel, student services, or other expenses associated with the creation or expansion of a career and technical education program that serves secondary students. Expansion of a program may include either the expansion of enrollments in a program or expansion into new areas of specialization within a program. No grant funds may be used for recurring instructional costs or for institutions' indirect costs.

(2) The Department of Education shall administer the program. The State Board of Education may adopt rules for program administration. The State Board of Education shall consider the statewide geographic dispersion of grant funds in ranking the applications and shall give priority to applications from education agencies that are making maximum use of their workforce development funding by offering high-performing, high-demand programs or to applications from a job engine charter school under s. 1002.33(15)(c).

Section 3. Subsection (5) is added to section 1013.15, Florida Statutes, to read:

1013.15 Lease, rental, and lease-purchase of educational plants, ancillary plants, and auxiliary facilities and sites.—

(5) Before occupying purchased or acquired real property, a district school board shall, in a public meeting, approve a 5-year plan for the proposed use of the real property, taking into consideration enrollment growth, demographic shifts, and changes in curriculum.

(a) A school board must demonstrate actual or projected 5-year growth in certain areas of a school district before purchasing or acquiring real property, if enrollment in the school district has declined by more than 4 percent in the preceding 5-year period. If such a decline has occurred, a school board must dispose of real property pursuant to s. 1013.28 in areas of the district which have declining enrollment.

(b) Surplus real property must be disposed of only in the best interests of the public, but priority must be given for conversion to affordable housing for teachers, first responders, or military servicemembers; charter school facilities; or the use by a local government for the development of a recreational facility.

Section 4. This act shall take effect July 1, 2025.

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 202
INTRODUCER:	Senator Jones
SUBJECT:	Municipal Water and Sewer Utility Rates
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Favorable**
2.	Shuler	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 202 creates an exception to the maximum rates that a municipality may charge municipal water and sewer utility customers who are outside of the corresponding municipality's boundaries. The bill provides that if a municipal utility provides water or sewer services to another municipality and serves that other municipality using a facility or water or sewer plant located within that other municipality, then the utility must charge its customers within that other municipality the same rates, fees, and charges as it does for those customers within its own municipal boundaries.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[1] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe and reliable manner and at fair prices.[2] In order to do so, the PSC exercises authority over utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3] PSC authority over municipal utilities is more limited, however.

[1] Section 350.001, F.S.
[2] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Mar. 27, 2025).
[3] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Mar. 27, 2025).

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2023, the PSC had jurisdiction over 146 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.[4]

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided in the chapter). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation," and others.[5] The PSC also does not regulate utilities in counties that have exempted themselves from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

Municipal Water and Sewer Utilities in Florida

A municipality[6] may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.[7]

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon between the municipalities.

Municipal Water and Sewer Utility Rate Setting

The PSC does not have jurisdiction over municipal water and sewer utilities, and as such, has no authority over the rates for such utilities. Municipally-owned water and sewer utility rates and revenues are regulated by their respective local governments, sometimes through a utility board or commission.

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[4] Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, 29 https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.pdf (last visited Mar. 27, 2025).
[5] Section 367.022, F.S.
[6] Defined by s. 180.01, F.S., as "any city, town, or village duly incorporated under the laws of the state."
[7] Section 180.02, F.S., *see also* s. 180.06, F.S.

Municipal Water and Sewer Utility Rates for Customers Outside of Corporate Limits

Section 180.191, F.S., provides limitations on the rates that can be charged to customers outside their municipal boundaries. The first option is that such a municipality may charge the same rates outside as inside its municipal boundaries, but may add a surcharge of not more than 25 percent to those outside the boundaries.[8] The fixing of rates, fees, or charges for customers outside of the municipal boundaries, in this manner, does not require a public hearing.

Alternatively, a municipality may charge rates that are just and equitable and based upon the same factors used in fixing the rates for the customers within the boundaries of the municipality. In addition, the municipality may add a 25 percent surcharge. When a municipality uses this methodology, the total of all rates, fees, and charges for the services charged to customers outside the municipal boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers within its municipal boundaries, for corresponding service.[9] Under this scenario, the rates, fees, and charges may not be set until a public hearing is held and the users, owners, tenants, occupants of property served or to be served, and all other interested parties have an opportunity to be heard on the rates, fees, and charges. Any change in the rates, fees, and charges must also have a public hearing unless the change is applied pro rata to all classes of service, both inside and outside of the municipality.[10]

The provisions of s. 180.191, F.S., may be enforced by civil action. Whenever any municipality violates, or if reasonable grounds exist to believe that a municipality is about to violate, s. 180.191, F.S., an aggrieved party may seek preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.[11] A prevailing party under such an action may seek treble damages and, in addition, a reasonable attorney's fee as part of the cost.[12]

City of Miami Gardens v. City of North Miami Beach

The Norwood Water Treatment Plant (Norwood Plant), operated by the City of North Miami Beach (NMB), treats and distributes water for North Miami Beach's municipal water and wastewater utility which provides service to customers in NMB and the City of Miami Gardens. Though owned by NMB, the plant is physically located outside of the geographic boundaries of that municipality in what is now, since May 13, 2003,[13] within the geographic boundaries of Miami Gardens.[14]

On January 7, 2003, NMB adopted an ordinance, pursuant to s. 180.191, F.S., increasing the surcharge on its water and wastewater customers residing outside of its municipal boundaries. On May 22, 2017, NMB entered into an agreement for a private entity to maintain, repair and manage the Norwood Plant; however, NMB retained ownership of the plant.[15]

[8] Section 180.191(1)(a), F.S.
[9] Section 180.191(1)(b), F.S.
[10] *Id.*
[11] Section 180.191(2), F.S.
[12] Section 180.191(4), F.S.
[13] Miami Gardens was incorporated on May 13, 2003.
[14] *City of Miami Gardens v. City of N. Miami Beach*, 346 So. 3d 648, 650–51 (Fla. 3d DCA 2022). The City of North Miami Beach operated the Norwood Plant before the City of Miami Gardens was incorporated.
[15] *Id.*at 651.

In December of 2018, Miami Gardens brought a class action lawsuit, which sought to represent not only itself, but also its residents who purchase water from the Norwood Plant. In part, Miami Gardens sought a declaratory judgment seeking the answers to three questions:

- If NMB assigned to a private contractor all operational responsibility for water utilities it owns that are located outside its geographical bounds, is NMB still "operating" those water utilities?
- If NMB is no longer "operating" water utilities it owns that are located outside its geographical bounds, may NMB lawfully charge a 25 percent surcharge on water provided to consumers within the City of Miami Gardens?
- Does s. 180.191, F.S., provide for the imposition of a 25 percent surcharge per billing cycle by NMB upon the City of Miami Gardens and the members of the class for water drawn from the aquifer located within the boundaries of the City of Miami Gardens which is processed in and never leaves the boundaries of the municipality?16

After the parties were given a chance to resolve the dispute for six months, the trial court eventually dismissed the complaint on four bases:

- NMB had terminated the contract with the private entity to operate the Norwood Plant, and thus the complaint was moot;
- The complaint was not supported by the plain language of s. 180.191(1), F.S;
- Statute of limitations, as the complaint had been filed 15 years after Miami Gardens was incorporated and 16 years after the surcharge had been put in place (citing to the four-year statute of limitations provided in s. 95.11(3), F.S; and
- Sovereign immunity.[17]

Miami Gardens appealed this dismissal to the Florida Third District Court of Appeal. The Third District Court reversed the dismissal and remanded the case back to the trial court, stating that:

- Sovereign immunity did not bar the claims of Miami Gardens. The court found that sovereign immunity did not apply in this matter since s. 180.191(4), F.S., clearly provides a financial damages remedy for actions pursuant to s. 180.191, F.S. In addition, the court found that sovereign immunity did not apply to refunds of previously paid illegal fees;
- Miami Gardens' allegation that an NMB-owned water treatment plant, contracted to be operated by a private party, was not entitled to assess a 25 percent surcharge on non-NMB residents, was sufficient to state a claim under s. 180.191, F.S.; and
- The matter was not moot, even though, since October 30, 2019, NMB had removed the surcharges for the services supplied to the City of Miami Gardens itself (but not for other residential and business customers) and, as of August 6, 2020, NMB had terminated its contract with the private entity operating the plant. The court found that Miami Gardens and its class still had a case and controversy as to whether it, and its residents, were due a refund and that the cessation of the surcharge was not permanent.[18]

[16] *Id.*
[17] *Id* at 653.
[18] *Id* at 653-58.

On January 16, 2025, the trial court issued a final order approving a settlement that pays $9 million to Miami Gardens and its class from NMB.[19]

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to the maximum rates that municipalities may charge municipal water and sewer utility customers that are outside of the municipality's boundaries under s. 180.191, F.S. The bill provides that if a municipal utility provides water and sewer services to a second municipality, and serves that second municipality using a facility or water or sewer plant located within that second municipality, that municipality must charge the customers within that second municipality the same rates, fees, and charges as the customers within its own municipal boundaries.

The bill provides the following definitions:

- "Facility" means a water treatment facility, wastewater treatment facility, intake station, pumping station, well, and other physical components of a water or wastewater system. The term "facility" in the bill does not include facilities that transport water from the point of entry to a wastewater treatment facility, or from a water source or treatment facility to the customer.
- "Wastewater treatment facility" means a facility that accepts and treats domestic or industrial wastewater.
- "Water treatment facility" means a facility within a water system which can alter the physical, chemical, or bacteriological quality of water.

Section 2 of the bill provides an effective date of the bill of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the

[19] *City of Miami Gardens v. City of North Miami Beach*, No. 2018-042450-CA-01 (Fla. 11th Cir. Ct. Jan. 16, 2025)(final order and judgment approving settlement agreement).

mandates requirements do not apply to laws having an insignificant impact,[20] which is $2.4 million or less for Fiscal Year 2024-2025.[21]

The bill provides that if a municipal utility provides water or sewer services to another municipality and serves that other municipality using a facility or water or sewer plant located within that other municipality, then the utility must charge its customers within that other municipality the same rates, fees, and charges as it does for those customers within its own municipal boundaries. In the same situation under current law, the providing municipality could charge just and equitable rates, fees, and charges based on rate fixing factors, as well as a surcharge of up to 25 percent.

If the anticipated effect of this provision is a not insignificant reduction in a municipality's ability to raise revenue, the bill requires approval by two-thirds vote of the membership of both chambers of the legislature.

To the extent that the limitation on fees, which are meant to cover actual costs, requires municipalities to take actions requiring the not-insignificant expenditure of funds, the bill requires a finding of important state interest and approval by two-thirds vote of the membership in order to bind municipalities. Staff is not aware of any estimates on anticipated costs associated with the bill.

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.

[20] FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Mar. 5, 2025).

[21] Based on the Demographic Estimating Conference's estimated population adopted on February 6, 2025. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/index.cfm (last visited Mar. 5, 2025).

B. Private Sector Impact:

Municipal water and sewer utility customers that are located in a different municipality than the municipality that operates the utility may see a water and sewer rate reduction under the provisions of the bill if that customer's municipality contains facilities or water or sewer plants for the utility.

C. Government Sector Impact:

Municipal governments that operate a municipal water and sewer utility, with facilities or water or sewer plants located in a second municipality, may see a reduction in utility revenue under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 180.191 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 Jones

34-00510-25 2025202__

A bill to be entitled

An act relating to municipal water and sewer utility rates; amending s. 180.191, F.S.; requiring a municipality to charge customers receiving its utility services in another municipality the same rates, fees, and charges as it charges consumers within its municipal boundaries under certain circumstances; defining terms; making technical changes; providing an effective date.

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

Section 1. Present subsections (2), (3), and (4) of section 180.191, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within this ~~the~~ state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition ~~thereto~~, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries, except as provided in subsection (2). Fixing of

such rates, fees, and charges in this manner does ~~shall~~ not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and that ~~which~~ are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries, except as provided in subsection (2). In addition ~~thereto~~, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for ~~said~~ services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may ~~shall~~ not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. ~~No~~ Such rates, fees, and charges may not ~~shall~~ be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby; and all others interested must ~~shall~~ have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice is ~~shall be~~ required.

(2) A municipality within this state which operates a water or sewer utility providing service to customers in another recipient municipality, which also has a facility in that recipient municipality, shall charge consumers in the recipient

municipality the same rates, fees, and charges as it does the consumers inside its own municipal boundaries. As used in this subsection, the term:

(a) "Facility" means a water treatment facility, a wastewater treatment facility, an intake station, a pumping station, a well, and other physical components of a water or wastewater system. The term does not include:

1. Pipes, tanks, pumps, or other facilities that transport water from a water source or treatment facility to the consumer; or

2. Pipes, conduits, and associated appurtenances that transport wastewater from the point of entry to a wastewater treatment facility.

(b) "Wastewater treatment facility" means a facility that accepts and treats domestic wastewater or industrial wastewater.

(c) "Water treatment facility" means a facility within a water system which can alter the physical, chemical, or bacteriological quality of water.

Section 2. This act shall take effect July 1, 2025.

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 658
INTRODUCER:	Senator Truenow
SUBJECT:	Waiver or Release of Liens
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Favorable**
2.	Shuler	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 658 amends the Construction Lien Law to modify the statutory forms which may be used to waive and release liens, and to expand upon the kinds of payment that a person may use to obtain an executed waiver and release of lien document.

The Construction Lien Law seeks to ensure that people working on construction projects are paid for their work. To ensure payment, any person who provides services, labor, or materials for improving, repairing, or maintaining real property may place a construction lien on the property, provided the person (the "lienor") complies with certain statutory procedures.

When a lienor is seeking a progress payment or final payment for his or her work, the lienor can induce payment by waiving and releasing his or her lien on the property using certain statutory forms. Currently, the lienor can use forms that are substantially similar to the statutory forms, or even forms that are entirely different, which are enforced in accordance with their own terms.

Instead of permitting lienors to use forms that are substantially similar to the statutory forms, or different forms altogether, the bill amends the Construction Lien Law to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends the Construction Lien Law to permit other forms of payment in addition to payment by check.

The bill takes effect July 1, 2025.

II. Present Situation:

Construction Liens

Generally

The Construction Lien Law[1] seeks to ensure that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien[2] on the property, provided the person complies with statutory procedures.[3] These procedures require the filing or serving of various documents, including a:

- Notice of Commencement.[4]
- Notice to Owner.[5]
- Claim of Lien.[6]
- Notice of Termination.[7]
- Waiver or Release of Lien.[8]
- Notice of Contest of Lien.[9]
- Contractor's Final Payment Affidavit.[10]
- Request for Sworn Statement of Account.[11]

To record a construction lien on real property, the lienor must record a claim of lien with the clerk's office in the county where the property is located and serve the owner with the claim of lien within 15 days after recording the lien.[12] If a claim of lien is not recorded, the lien is

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[1] Chapter 713, Part I, F.S. *See* s. 713.001, F.S. (providing the short title).
[2] A lien is a claim against property that evidences a debt, obligation, or duty. *See* Legal Information Institute, *Construction Lien*, https://www.law.cornell.edu/wex/construction_lien (last visited Mar. 27, 2025). "A construction lien, also known as a mechanic's lien , laborer's lien , or artisan's lien , is a type of lien that gives contractors a security interest in property until they have been paid for their work on that property. A construction lien offers the holder of this lean [sic] an interest in the property under construction. If a specific debt is not paid, then the construction lien can be enforced against the property upon which the lien exists." *Id.*
[3] Chapter 713, Part I, F.S.
[4] Section 713.13, F.S.
[5] To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to the owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner generally must obtain a waiver or release of lien from the notice's sender before paying the contractor unless a payment bond applies. Otherwise, payments to the contractor may leave the owner liable to the notice sender if the contractor does not pay such person. *See generally* s. 713.06, F.S.; *see also Stock Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011) (observing that the "purpose of the notice is to protect an owner from the possibility of paying over to his contractor sums which ought to go to a subcontractor who remains unpaid" (citations omitted)).
[6] Section 713.08, F.S.
[7] Section 713.132, F.S.
[8] Section 713.20, F.S.
[9] Section 713.22(2), F.S.
[10] Section 713.06(3)(d), F.S.
[11] Section 713.16, F.S.
[12] Section 713.08(4)(c), F.S.

voidable to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.[13]

A person may file a claim of lien at any time during the progress of the work but may not file a claim of lien later than 90 days after the person's final furnishing of labor or materials.[14] A person may record a single claim of lien for multiple services or materials provided to different properties so long as such services or materials were provided under the same contract, the person is in privity with the owner, and the properties have the same owner.[15] However, a person may not record a single claim of lien for multiple services or materials if there is more than one contract, even if the contracts for services and materials are with the same owner.[16]

Waiver or Release of Lien

The Construction Lien Law provides that any person may, at any time, waive, release, or satisfy any part of his or her lien under the Construction Lien Law.[17] The waiver, release, or satisfaction of the lien may be either as to the amount due for labor, services, or materials furnished; for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release; or as to any part or parcel of the real property.[18] A written waiver of the right to file a mechanics' lien is generally valid and effective.[19]

A right to claim a lien may not be waived in advance, and any waiver of a right to claim a lien that is made in advance is unenforceable.[20] A lien may be waived only to the extent of labor, services, or materials furnished.[21] The right to a lien may be waived expressly or by implication.[22] Before such an important right will be deemed to have been waived by the implication of one's conduct, the implication must be clear and unambiguous, and any ambiguity will be resolved against a waiver;[23] but if it is clear that a waiver is intended, the contract will be construed according to the parties' intention.[24]

The Construction Lien Law sets forth the forms to be substantially followed when a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, either a progress payment[25] or the final payment.[26] A person may not require a lienor to furnish a lien

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[13] *Id.*
[14] Section 713.08(5), F.S.
[15] Section 713.09, F.S.
[16] *See id.*; *see also Lee v. All Florida Construction Co.*, 662 So. 2d 365, 366-67 (Fla. 3d DCA 1995) (finding that a contractor was required to file two claims of mechanics' lien against a home for construction and subsequent repair work done on the home, even though work was done on the same structure, where construction and repairs were done under two separate contracts).
[17] Section 713.20(3), F.S.
[18] *Id.*
[19] *Greco-Davis Contracting Co. v. Stevmier, Inc.,* 162 So. 2d 285, 285 (Fla. 2d DCA 1964).
[20] Section 713.20(2), F.S
[21] *.Id.*
[22] *Frank Maio General Contractor, Inc. v. Consolidated Elec. Supply, Inc.,* 452 So. 2d 1092, 1093 (Fla. 4th DCA 1984); *Orlando Central Park, Inc. v. Master Door Co. of Orlando, Inc.,* 303 So. 2d 685, 686 (Fla. 4th DCA 1974).
[23] *Orlando Central Park, Inc.*, 303 So. 2d at 686.
[24] *Frank Maio General Contractor, Inc.,* 452 So. 2d at 1093.
[25] Section 713.20(4), F.S.
[26] Section 713.20(5), F.S.

waiver or release of lien that is different from the forms set forth in the statute;[27] nevertheless, a lien waiver or lien release that is not substantially similar to the forms set forth is enforceable in accordance with its terms.[28]

A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check.[29] However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.[30]

III. Effect of Proposed Changes:

Under the existing Construction Lien Law, whenever a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment (see s. 713.20(4), F.S.) or a final payment (see s. 713.20(5), F.S.), the lienor has the option of either:

- Using waiver and release of lien forms that are identical or substantially similar to the forms in s. 713.20(4) and (5), F.S.
- Using waiver and release of lien forms that are not substantially similar to the forms in the statute, in which case the form will be enforced in accordance with its terms.

The bill amends s. 713.20(4) and (5), F.S., to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends s. 713.20(7), F.S., to permit other forms of payment in addition to payment by check.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[27] Section 713.20(6), F.S.
[28] Section 713.20(8), F.S.
[29] Section 713.20(7), F.S.
[30] *Id.*

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:

By prohibiting the use of waiver and release forms that differ from the statutory forms, those obligated to make payments will have less power to force those entitled to payment to waive additional rights as a condition of receiving payment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.20 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 Truenow

13-00819-25 2025658__

A bill to be entitled

An act relating to waiver or release of liens; amending s. 713.20, F.S.; requiring that waiver and release of lien forms include specific language; authorizing a lienor who executes such lien and release forms in exchange for payment, rather than a check, to condition such waiver and release on receipt of funds, rather than payment of a check; deleting a provision that a lien waiver or lien release is enforceable if it does not contain such specific language; providing an effective date.

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

Section 1. Subsections (4), (5), (7), and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(4) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release must ~~may~~ be in ~~substantially~~ the following form:

WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of $...., hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through ...(insert date)... to ...(insert the name of your customer)...

on the job of ...(insert the name of the owner)... to the following property:

...(description of property)...

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on ...., ...(year).... ...(Lienor)...

By: ....

(5) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release must ~~may~~ be in ~~substantially~~ the following form:

WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of $........, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to ...(insert the name of your customer)... on the job of ...(insert the name of the owner)... to the following described property:

...(description of property)...

DATED on ...., ...(year).... ...(Lienor)...

By: .....

(7) A lienor who executes a lien waiver and release in exchange for payment ~~a check~~ may condition the waiver and release on receipt of funds ~~payment of the check~~. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid funds ~~check~~ until any such condition is satisfied.

~~(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.~~

Section 2. This act shall take effect July 1, 2025.

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 712
INTRODUCER:	Senator Grall
SUBJECT:	Construction Regulations
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Pre-meeting**
2.			AEG	
3.			RC	

I. Summary:

SB 712 contains a variety of provisions related to construction and development. The bill:

- Preempts local governments from prohibiting property owners from installing synthetic turf on their property.
- Requires local governments to approve or deny change orders from their contractors within 30 days.
- Prohibits the state and political subdivisions from penalizing large volume construction bidders or rewarding small volume bidders in the bidding process for public works projects.
- Prohibits local building departments from requiring copies of contracts and associated documents in order to apply for or receive a building permit.

The bill takes effect July 1, 2025.

II. Present Situation:

Synthetic Turf

Synthetic turf, also known as "artificial grass" is a surface that closely replicates the look and feel of natural grass. Synthetic turf is a type of landscaping that eliminates the potentially unpredictable growth of natural grass.[1] Current law prohibits homeowners' associations from restricting property owners or their tenants from installing, displaying, or storing synthetic turf that is not visible from the parcel's frontage or an adjacent parcel.[2] However, there is no law restricting local governments from regulating synthetic turf.

[1] Kevin Sullivan, *Artificial Turf 101: A Comprehensive Guide to Synthetic Grass*, Turf Network Directory & Information Hub, available at https://turfnetwork.org/artificial-turf-101/ (last visited Mar. 26, 2025).
[2] Section 720.3045, F.S.

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[3] Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[4] Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.[5]

Preemption

Preemption refers to the principle that a federal or state statute can supersede or supplant state or local law that stands as an obstacle to accomplishing the full purposes and objectives of the overriding federal or state law.[6]

Where state preemption applies, a local government may not exercise authority in that area.[7] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.[8]

Prompt Payments for Public Construction Contracts

Contracts between local governments and private contractors for construction of public projects are subject to prompt payment requirements. The Local Government Prompt Payment Act[9] provides for timely payment by local governmental entities[10] to construction contractors.[11] The collection of statutes provides timelines for payment, schedules for interest on late payments, and dispute resolution processes.[12]

Change Orders

A "change order" is an amendment to a construction contract that changes the contractor's scope of work. Most change orders modify the work required by the contract or adjust the amount of time the contractor has to complete the work, or both.[13]

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[3] Art. VIII, s. 1(f), Fla. Const.
[4] Art. VIII, s. 1(g), Fla. Const.
[5] Art. VIII, s. 2(b); *see also* Section 166.021(1), F.S.
[6] Preemption Definition, Black's Law Dictionary (12th ed. 2024).
[7] *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[8] See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).
[9] Part VII, Ch. 218, F.S.
[10] A county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof. Section 218.72(5), F.S.
[11] A contractor is one who contracts directly with a local government to provide construction services. Section 218.72(3), F.S.
[12] Section 218.71, F.S.
[13] Luke J. Farley, Sr., *Construction 101: The Basics of Change Orders*, American Bar Association (October 8, 2018) https://www.americanbar.org/groups/construction_industry/publications/under_construction/2018/fall/construction-101/ (last visited Mar. 26, 2025).

Competitive Solicitation of Construction Services

Current law specifies construction services procurement procedures for public property and public owned buildings.[14] The Department of Management Services (DMS) is responsible for establishing by rule procedures to:[15]

- Determine the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts.[16]
- Award each state agency construction project to the lowest qualified bidder.[17]
- Govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.[18]
- Enter into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.[19]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[20] A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of $300,000.[21]

Prohibited Local Government Preferences in Contracts for Construction Services

In a competitive solicitation[22] for construction services that is paid for with state-appropriated funds, a local government may not use a local ordinance or regulation that provides a preference based upon a contractor, subcontractor, or material supplier or carrier:[23]

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

A local government that will use state-appropriated funds to pay for construction services must disclose in the solicitation document that any of the aforementioned preferences will be prohibited.[24]

Public Works Projects

A public works project is an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a

[14] *See* ch. 255, F.S.
[15] Section 255.29, F.S.
[16] Rules 60D-5.004 and F.A.C.
[17] Rule 60D-5.007, F.A.C.
[18] Rule 60D-5.008, F.A.C.
[19] Rule 60D-5.0082, F.A.C.
[20] *See* s. 255.0525, F.S.; *see also* Rules 60D-5.002 and 60D-5.0073, F.A.C.
[21] Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over $75,000.
[22] "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate. Section 255.248, F.S.
[23] Section 255.0991(2), F.S.
[24] Section 255.0991(3), F.S.

building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.[25]

Prohibited Local Government Preferences in Public Works Projects

Except as required by federal or state law, the state or any political subdivision[26] that contracts for a public works project may not:[27]

- Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the headquarters or offices of the party, unless the local government is the sole source of funding for the project;
- Require a contractor, subcontractor, or material supplier or carrier engaged in the project to:
  - Pay employees a predetermined amount of wages or prescribe any wage rate;
  - Provide employees a specified type, amount, or rate of employee benefits;
  - Control, limit, or expand staffing; or
  - Recruit, train, or hire employees from a designated, restricted, or single source.
- Prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law.

Enforcement of the Florida Building Code: Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.[28] Authorized state and local government agencies enforce the Florida Building Code and issue building permits.[29]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity. It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[30] A local building department or enforcement agency must post each type of building permit application on its website.[31] Each application must be inscribed with the date of application and the Florida Building Code in effect as of that date.[32]

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[25] Section 255.0992(1)(b), F.S.
[26] "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works. *See* s. 255.0992(1)(a), F.S.
[27] Section 255.0992, F.S.
[28] Section 553.72(2), F.S.
[29] *See* ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1) F.S.
[30] *See* ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.
[31] Section 553.79(1)(b), F.S.
[32] Section 105.3, 2023 Florida Building Code.

A local government may not require a contract between a builder and an owner for the issuance of a building permit, or as a requirement for the submission of a building permit application.[33]

III. Effect of Proposed Changes:

Section 1 creates s. 125.572, F.S., to prohibit local governments from adopting or enforcing any ordinance, resolution, order, rule, or policy that prohibits, or is used to prohibit, a property owner from installing synthetic turf on his or her land.

The section also prohibits a local government from adopting or enforcing any ordinance, resolution, order, rule, or policy that **regulates** synthetic turf installed in single-family residential areas that are one acre or less in size.

"Synthetic turf" is defined to mean "a manufactured product that resembles natural grass and is used as a surface for landscaping and recreational areas."

The bill authorizes the Department of Environmental Protection to adopt rules to implement the prohibitions on local government synthetic turf regulations.

Section 2 creates s. 218.755, F.S., to provide that if a local government receives a price quote for a change order from its contractor, which meets all statutory and contractual requirements, the local government must provide written notice to the contractor approving or denying the price quote within 30 days.

If a local government denies the price quote, the written notice must specify the alleged deficiencies in the quote and list the actions necessary to remedy the deficiencies. If a local government fails to provide such information in the written denial notice then it is liable to the contractor for any additional labor, staffing, materials, supplies, equipment, and overhead associated with the change order.

A contract between a local government and a contractor may not alter these provisions.

Section 3 amends s. 255.0992, F.S., to provide that the state or any political subdivision which contracts for public works may not penalize a bidder for performing a larger volume of construction work for the state or political subdivision, or reward a bidder for performing a smaller volume of construction work for the state or political subdivision.

Section 4 amends s. 553.79, F.S., to provide that a local enforcement agency may not require a copy of a contract between a builder and an owner or any ancillary documents such as letters of intent as a requirement to apply for or receive a building permit.

The bill takes effect July 1, 2025.

[33] Section 553.79(1)(f), 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:

None.

C. Government Sector Impact:

Requiring local governments to process change orders within 30 days may lead to a decrease in construction time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.0992 and 553.79.
This bill creates the following sections of the Florida Statutes: 125.572 and 218.755.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Community Affairs (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 125.572, Florida Statutes, is created to read:

125.572 Regulation of synthetic turf.—

(1) As used in this section, the term "synthetic turf" means a manufactured product that resembles natural grass and is used as a surface for landscaping and recreational areas.

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(2) The Department of Environmental Protection shall adopt minimum standards for the installation of synthetic turf on single-family residential properties 1 acre or less in size. The standards must take into account material type, permeability, stormwater management, potable water conservation, water quality, proximity to trees and other vegetation, and other factors impacting environmental conditions of adjacent properties.

(3) Upon the Department of Environmental Protection adopting rules pursuant to subsection (4), a local government may not:

(a) Adopt or enforce any ordinance, resolution, order, rule, or policy that prohibits, or is enforced to prohibit, a property owner from installing synthetic turf that complies with Department of Environmental Protection standards adopted pursuant to this section which apply to single-family residential property.

(b) Adopt or enforce any ordinance, resolution, order, rule, or policy that regulates synthetic turf which is inconsistent with the Department of Environmental Protection standards adopted pursuant to this section which apply to single-family residential property.

(4) The Department of Environmental Protection shall adopt rules to implement this section.

Section 2. Section 218.755, Florida Statutes, is created to read:

218.755 Prompt processing of change orders.—Beginning on or after July 1, 2025, if a local governmental entity receives from its contractor a price quote for a change order issued by the

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local governmental entity, and the price quote conforms to all statutory requirements and contractual requirements for the project, the local governmental entity must approve or deny the price quote and send written notice of that decision to the contractor within 30 days after receipt of such quote. Any denial notice must specify the alleged deficiencies in the price quote and the actions necessary to remedy those deficiencies. If the local governmental entity fails to provide such information on a denial notice, it is liable to the contractor for all additional labor, staffing, materials, supplies, equipment, and overhead associated with the change order. A contract between a local governmental entity and a contractor may not alter the local governmental entity's duties under this section.

Section 3. Paragraph (d) is added to subsection (2) of section 255.0992, Florida Statutes, to read:

255.0992 Public works projects; prohibited governmental actions.—

(2) Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not take the following actions:

(d) Penalize a bidder for performing a larger volume of construction work for the state or political subdivision or reward a bidder for performing a smaller volume of construction work for the state or political subdivision.

Section 4. Subsection (7) of section 489.505, Florida Statutes, is amended to read:

489.505 Definitions.—As used in this part:

(7) "Certified alarm system contractor" means an alarm system contractor who possesses a certificate of competency

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issued by the department. The scope of certification is limited to alarm circuits originating in the alarm control panel and equipment governed by the applicable provisions of Articles 722, 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition. The scope of certification for alarm system contractors also includes the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability, surveillance cameras, or electric locks; however, this provision governing the scope of certification does not create any mandatory licensure requirement.

Section 5. Subsections (2) and (10) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(2)(a) The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control

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of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. 515.25, 515.27, and 515.29 by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. 515.23. Technical provisions to be contained within the Florida Building Code are restricted to requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4) and (6)-(9)~~, (6), (7), (8), and (9)~~ are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

(b) By January 1, 2026, or the next update of the Florida Building Code, whichever occurs first, the commission shall amend the Florida Building Code to be consistent with the 2024 International Building Code that recognizes tall mass timber as an allowable material for construction types IV-A, IV-B, IV-C, and IV-HT.

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law,

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and any further exemptions shall be as determined by the Legislature and provided by law:

(a) Buildings and structures specifically regulated and preempted by the Federal Government.

(b) Railroads and ancillary facilities associated with the railroad.

(c) Nonresidential farm buildings on farms.

(d) Temporary buildings or sheds used exclusively for construction purposes.

(e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities apply to such mobile or modular structures.

(f) Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.

(g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.

(h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code. In addition, such buildings that are 400 square feet or less and that are intended for use in conjunction with one- and two-family residences are not subject to the door height and width requirements of the Florida Building Code.

(i) Chickees constructed by the Miccosukee Tribe of Indians

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of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

(j) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.

(k) A building or structure having less than 1,000 square feet which is constructed and owned by a natural person for hunting and which is repaired or reconstructed to the same dimension and condition as existed on January 1, 2011, if the building or structure:

1. Is not rented or leased or used as a principal residence;

2. Is not located within the 100-year floodplain according to the Federal Emergency Management Agency's current Flood Insurance Rate Map; and

3. Is not connected to an offsite electric power or water supply.

(l) A drone port as defined in s. 330.41(2).

(m) Any system or equipment, whether affixed or movable, which is located on property within a spaceport territory pursuant to s. 331.304 and which is used for the production, erection, alteration, modification, repair, launch, processing, recovery, transport, integration, fueling, conditioning, or equipping of a space launch vehicle, payload, or spacecraft.

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With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

Section 6. Paragraph (f) of subsection (1) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(f) A local government may not require a contract between a builder and an owner<u>, any copies of such contract, or any associated document, including, but not limited to, letters of intent, material costs lists, labor costs, or overhead or profit statements,</u> for the issuance of a building permit or as a

requirement for the submission of a building permit application.

Section 7. Subsection (3) of section 497.271, Florida Statutes, is amended to read:

497.271 Standards for construction and significant alteration or renovation of mausoleums and columbaria.—

(3) The licensing authority shall transmit the rules as adopted under subsection (2), ~~hereinafter~~ referred to as the "mausoleum standards," to the Florida Building Commission, which shall initiate rulemaking under chapter 120 to consider such mausoleum standards. If such mausoleum standards are not deemed acceptable, they must ~~shall~~ be returned by the Florida Building Commission to the licensing authority with details of changes needed to make them acceptable. If such mausoleum standards are acceptable, the Florida Building Commission must ~~shall~~ adopt a rule designating the mausoleum standards as an approved revision to the State Minimum Building Codes under part IV of chapter 553. When ~~so~~ designated by the Florida Building Commission, such mausoleum standards shall become a required element of the State Minimum Building Codes under s. 553.73(2)(a) ~~s. 553.73(2)~~ and shall be transmitted to each local enforcement agency, as defined in s. 553.71(5). Such local enforcement agency shall consider and inspect for compliance with such mausoleum standards as if they were part of the local building code, but shall have no continuing duty to inspect after final approval of the construction pursuant to the local building code. Any further amendments to the mausoleum standards shall be accomplished by the same procedure. Such designated mausoleum standards, as from time to time amended, shall be a part of the State Minimum Building Codes under s. 553.73 until the adoption


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and effective date of a new statewide uniform minimum building code, which may supersede the mausoleum standards as provided by the law enacting the new statewide uniform minimum building code.

Section 8. For the purpose of incorporating the amendment made by this act to section 489.505, Florida Statutes, in a reference thereto, subsection (2) of section 201.21, Florida Statutes, is reenacted to read:

201.21 Notes and other written obligations exempt under certain conditions.—

(2) There shall be exempt from all excise taxes imposed by this chapter all non-interest-bearing promissory notes, non-interest-bearing nonnegotiable notes, or non-interest-bearing written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same, of $3,500 or less, when given by a customer to an alarm system contractor, as defined in s. 489.505, in connection with the sale of an alarm system as defined in s. 489.505.

Section 9. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to construction regulations; creating s. 125.572, F.S.; defining the term “synthetic turf”; requiring the Department of Environmental Protection

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to adopt minimum standards for the installation of synthetic turf on specified properties; requiring that the standards take into account specified factors; prohibiting local governments from adopting or enforcing any ordinance, resolution, order, rule, or policy that prohibits, or is enforced to prohibit, property owners from installing synthetic turf meeting certain standards on single-family residential property of a specified size; prohibiting local governments from adopting or enforcing specified ordinances, resolutions, orders, rules, or policies that regulate synthetic turf which are inconsistent with specified standards; requiring the Department of Environmental Protection to adopt rules; creating s. 218.755, F.S.; requiring local governmental entities to approve or deny certain price quotes and provide notice to contractors within a specified timeframe; requiring denials to specify alleged deficiencies and actions necessary to remedy such deficiencies; providing that a local governmental entity that fails to provide such information with a denial is liable to the contractor for specified overhead; prohibiting contracts from altering specified duties of a local governmental entity; amending s. 255.0992, F.S.; prohibiting the state or political subdivisions that contract for public works projects from penalizing or rewarding bidders for performing larger or smaller volumes of construction work for the state or political subdivisions; amending s. 489.505, F.S.;

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revising the definition of the term "certified alarm system contractor"; amending s. 553.73, F.S.; requiring the Florida Building Commission, within a specified timeframe, to amend the Florida Building Code to recognize tall mass timber as an allowable material for specified construction types; providing an exemption from the Florida Building Code to systems or equipment located within a spaceport territory which is used for specified purposes; amending s. 553.79, F.S.; prohibiting local governments from requiring copies of contracts and certain associated documents for the issuance of building permits or as a requirement for submitting building permit applications; amending s. 497.271, F.S.; conforming a cross-reference; reenacting s. 201.21(2), F.S., relating to an exemption from all excise taxes imposed by ch. 201, F.S., for specified notes and obligations when given by a customer to an alarm system contractor in connection with the sale of an alarm system, to incorporate the amendment made to s. 489.505, F.S., in a reference thereto; providing an effective date.

By Senator Grall

29-00802-25 2025712__

A bill to be entitled

An act relating to construction regulations; creating s. 125.572, F.S.; defining the term "synthetic turf"; prohibiting local governments from adopting or enforcing any ordinance, resolution, order, rule, or policy that prohibits, or is enforced to prohibit, property owners from installing synthetic turf on their land; prohibiting local governments from adopting or enforcing any ordinance, resolution, order, rule, or policy that regulates synthetic turf installed in specified single-family residential areas; authorizing the Department of Environmental Protection to adopt rules; creating s. 218.755, F.S.; requiring local governmental entities to approve or deny certain price quotes and provide notice to contractors within a specified timeframe; requiring denials to specify alleged deficiencies and actions necessary to remedy such deficiencies; providing that a local governmental entity that fails to provide such information with a denial is liable to the contractor for specified overhead; prohibiting contracts from altering specified duties of a local governmental entity; amending s. 255.0992, F.S.; prohibiting the state or political subdivisions that contract for public works projects from penalizing or rewarding bidders for performing larger or smaller volumes of construction work, respectively, for the state or political subdivisions; amending s. 553.79, F.S.; prohibiting local enforcement agencies from requiring

ancillary documentation between permit applicants and their clients for issuing building permits or as a requirement for submitting building permit applications; providing an effective date.

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

Section 1. Section 125.572, Florida Statutes, is created to read:

125.572 Regulation of synthetic turf.—

(1) As used in this section, the term "synthetic turf" means a manufactured product that resembles natural grass and is used as a surface for landscaping and recreational areas.

(2) A local government may not adopt or enforce any ordinance, resolution, order, rule, or policy that prohibits, or is enforced so as to prohibit, a property owner from installing synthetic turf on his or her land.

(3) A local government may not adopt or enforce any ordinance, resolution, order, rule, or policy that regulates synthetic turf installed in single-family residential areas 1 acre or less in size.

(4) The Department of Environmental Protection may adopt rules to implement this section.

Section 2. Section 218.755, Florida Statutes, is created to read:

218.755 Prompt processing of change orders.—Beginning on or after July 1, 2025, if a local governmental entity receives from its contractor a price quote for a change order issued by the local governmental entity, and the price quote conforms to all

statutory requirements and contractual requirements for the project, the local governmental entity must approve or deny the price quote and send written notice of that decision to the contractor within 30 days. Any denial notice must specify the alleged deficiencies in the price quote and the actions necessary to remedy those deficiencies. If the local governmental entity fails to provide such information on a denial notice, it is liable to the contractor for all additional labor, staffing, materials, supplies, equipment, and overhead associated with the change order. A contract between a local governmental entity and a contractor may not alter the local governmental entity's duties under this section.

Section 3. Paragraph (d) is added to subsection (2) of section 255.0992, Florida Statutes, to read:

255.0992 Public works projects; prohibited governmental actions.—

(2) Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not take the following actions:

(d) Penalize a bidder for performing a larger volume of construction work for the state or political subdivision or reward a bidder for performing a smaller volume of construction work for the state or political subdivision.

Section 4. Paragraph (f) of subsection (1) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(f) A local enforcing agency ~~government~~ may not require a contract, or any other ancillary documentation, including, but

not limited to, letters of intent, between a permit applicant and its client ~~builder and an owner~~ for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 5. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Stan McClain, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 26, 2025

I respectfully request that **Senate Bill #712**, relating to Construction Regulations, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Erin K. Grall

Senator Erin Grall
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 952
INTRODUCER:	Senator Ingoglia
SUBJECT:	Restrictions on Firearms and Ammunition During Emergencies
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Favorable**
2.	Shuler	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 952 repeals s. 870.044, F.S., which provides that when a county sheriff or a city official declares a local state of emergency due to their belief of a clear and present danger of a riot, public disorder, disobedience, and substantial injury to persons or property, a person may not:

- Sell or offer to sell firearms or ammunition;
- Intentionally display firearms or ammunition in a store or shop; or
- Intentionally possess a firearm in a public place unless he or she is an authorized law enforcement official or person in military service acting in the official performance of her or his duty.

The bill also repeals the provision in section 870.044, F.S., which provides that nothing in ch. 870, F.S., may be construed to authorize the seizure, taking, or confiscation of lawfully possessed firearms unless the person is engaged in a criminal act.

There is no fiscal impact from the bill.

The bill takes effect upon becoming a law.

II. Present Situation:

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's overall approach to activities related to the management of emergencies of all types. The State Emergency Management Act delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the

Governor finds that an emergency[1] has occurred or is imminent, he or she must declare a state of emergency.[2] In the event of an emergency beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within this state and is authorized to delegate such powers as she or he may deem prudent.[3]

Under the State Emergency Management Act, the Governor has the specific authority to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.[4] However, nothing contained in the State Emergency Management Act or the Florida Emergency Planning and Community Right-to-Know Act (ss. 252.31-252.90, F.S.) may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.[5]

Emergency Management - Counties and Municipalities

The responsibilities and powers of counties and municipalities in response to emergencies are specified by the State Emergency Management Act. The Act provides specific authorization and emergency powers to counties and municipalities, including the requirement for each county (municipalities are encouraged) to develop a county emergency management plan consistent with the state comprehensive emergency management plan.[6]

Counties and municipalities have the authority under the State Emergency Management Act to declare a state of local emergency in the event of an emergency affecting only one county or municipality for the purpose of requesting state assistance or invoking emergency-related mutual-aid assistance.[7] Such a declaration may only last 7 days, and may be extended in 7-day increments as necessary.[8]

Affrays; Riots; Routs; Unlawful Assemblies

Chapter 870, F.S., provides for the authority of officials to react in the event of unlawful assemblies, riots, and other such public acts or threats of violence. The designation of local officials with the authority to declare local emergencies under the chapter differs for unincorporated areas and municipalities. For unincorporated areas, section 870.042, F.S., empowers a county sheriff, or other official having the duties of the sheriff, to declare that a state of emergency exists within those unincorporated areas and to exercise the emergency powers conferred in ss. 870.041-870.047, F.S.[9]

[1] Under the State Emergency Management Act, the term "emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See* s. 252.34(4), F.S.
[2] Section 252.36(2), F.S.
[3] Section 252.36(1)(a), F.S.
[4] Section 252.36(6)(h), F.S.
[5] *Id.*
[6] Sections 252.38(1)(a) and (2), F.S.
[7] Section 252.38(3)(a)5., F.S.
[8] *Id.*
[9] Section 870.042(1), F.S.

For municipalities, the governing body of any municipality may designate by an ordinance a city official who will be empowered to declare that a state of emergency exists within the boundaries of the municipality and to exercise the emergency powers conferred in ss. 870.041-870.047, F.S. The designated city official will be either the mayor or chief of police or the person who performs the duties of a mayor or chief of police in the municipality. In the absence of an ordinance designating the official to act, the chief of police of the municipality is designated as the city official to assume the duties and powers set forth in the statute.[10]

Sections 870.041-870.047, F.S., specify the parameters within which local officials may declare emergencies locally and may act under the chapter. These provisions include:

- The general authority of local officers to declare an emergency locally in the event of acts or threats of violence.[11]
- The designation of the local official with the authority to declare a local emergency under the chapter.[12]
- The circumstances under which a local official may declare a local emergency.[13]
- Acts automatically prohibited when a locally-declared state of emergency under the chapter exists[14]
- Limitations and conditions that public officials have the authority to promulgate when a locally-declared state of emergency under the chapter exists.[15]
- Requirements for filing and publishing notice of the locally-declared state of emergency.[16]
- Limits on the duration of locally-declared states of emergency and requirements for extensions.[17]

The specific conditions that authorize the sheriff or designated city official to declare a state of emergency are provided in s. 870.043, F.S. Under the section, whenever the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he or she may declare that a state of emergency exists within that jurisdiction or any part or parts thereof.[18]

Local officials also have the more general authority pursuant to s. 870.041 to declare a state of emergency in the event of overt acts, or the imminent threat, of violence within the county or municipality and the Governor has not declared a state of emergency.

[10] Section 870.042(2), F.S.
[11] Section 870.041, F.S.
[12] Section 870.042, F.S.
[13] Section 870.043, F.S.
[14] Section 870.044, F.S.
[15] Section 870.045, F.S.
[16] Section 870.046, F.S.
[17] Section 870.047, F.S.
[18] Section 870.043, F.S.

Section 870.044, F.S., prohibits the following acts, throughout the specified jurisdiction, during a state of emergency declared by a sheriff or designated city official pursuant to the conditions of violence and disorder specified in s. 870.043, F.S.:[19]

- The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.
- The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.
- The intentional possession in a public place of a firearm by any person, except an authorized law enforcement official or person in military service acting in the official performance of her or his duty.[20]

Section 870.044, F.S., also specifies that nothing contained in ch. 870, F.S., may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.

Under s. 790.01, F.S., it is not unlawful for a person to carry a concealed weapon or a concealed firearm while in the act of evacuating during a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S.[21]

III. Effect of Proposed Changes:

The bill repeals s. 870.044, F.S., which prohibits a person from selling or offering to sell firearms or ammunition, intentionally displaying firearms or ammunition in a store or shop, or intentionally possessing a firearm in a public place during a local state of emergency declared pursuant to the conditions of violence and disorder specified in s. 870.043, F.S., unless he or she is an authorized law enforcement official or person in military service acting in the official performance of her or his duty.

The bill also repeals the provision of s. 870.044, F.S., which provides that nothing in ch. 870, F.S., may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s.18, of the State Constitution.

[19] Section 870.043, F.S.
[20] Section 870.044, F.S.
[21] Section 790.01(5), F.S.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following section of the Florida Statutes: 870.044.

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 Ingoglia

11-00242-25 2025952__

A bill to be entitled

An act relating to restrictions on firearms and ammunition during emergencies; repealing s. 870.044, F.S., relating to specified automatic restrictions on firearms and ammunition during certain declared emergencies; providing an effective date.

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

Section 1. Section 870.044, Florida Statutes, is repealed.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Environment and Natural Resources, *Vice Chair*
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Transportation, Tourism, and Economic Development
Fiscal Policy
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR BLAISE INGOGLIA
11th District

March 11th, 2025

The Honorable Stan McClain, Chair
Committee on Community Affairs
312 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 952 Restrictions on Firearms and Ammunition During Emergencies

Chair McClain,

Senate Bill 952 has been referred to the Committee on Community Affairs as its second committee of reference. I respectfully ask that it be placed on the committee agenda at your earliest convenience.

If I may answer questions or be of assistance, please do not hesitate to contact me. Thank you for your leadership and consideration.

Regards,

Blaise Ingoglia
State Senator, District 11

CC'd: Elizabeth Fleming, Tatiana Warden

REPLY TO:
❒ 2943 Landover Boulevard, Spring Hill, Florida 34608 (352) 666-5707
❒ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

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

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 954
INTRODUCER:	Senator Gruters
SUBJECT:	Recovery Residences
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Pre-meeting**
2.			AHS	
3.			RC	

I. Summary:

SB 954 relates to the establishment and regulation of recovery residences—sober living homes supporting individuals recovering from substance abuse. The bill:

- Removes zoning pre-approval requirements for substance abuse provider licensing.
- Allows recovery residence license transfers to new owners.
- Reforms the nature of probationary, interim, and regular licensure for substance abuse recovery licenses.
- Requires notification, rather than immediate removal, of personnel failing background check standards.
- Preempts local zoning laws to permit recovery residences in all multifamily zones upon administrative approval, with exceptions.
- Adjusts personnel-to-resident ratio limits and relaxes 24/7 supervision requirements for recovery residences.
- Restricts state agencies from disclosing confidential information and clarifies liability exemptions.
- Classifies recovery residences as nontransient residential land use under local zoning laws.
- Establishes the Substance Abuse and Recovery Residence Efficiency Committee within DCF to evaluate and improve recovery residence operations.

The bill takes effect July 1, 2025.

II. Present Situation:

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth

[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; (last visited

Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2021, approximately 46.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year.[6] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants. Provisional data from the CDC's National Center for Health Statistics indicate there were an estimated 107,622 drug overdose deaths in the United States during 2021 (the last year for which there is complete data), an increase of nearly 15% from the 93,655 deaths estimated in 2020.[7]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse. The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[8] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[9] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[10]

March 28, 2025); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited March 28, 2025).

[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited March 28, 2025).

[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders*, http://www.samhsa.gov/disorders/substance-use (last visited March 28, 2025).

[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited March 28, 2025).

[5] *Id.*

[6] The SAMHSA, *Highlights for the 2021 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf (last visited March 28, 2025).

[7] The Center for Disease Control and Prevention, National Center for Health Statistics, *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%*, available at https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm (last visited March 28, 2025).

[8] *Id.*

[9] *Id.*

[10] *Id.*

In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[11]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[12] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[13] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[14]

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[15] The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[16]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[17]
- **Treatment Services:** Treatment services[18] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their ability to control their substance use on their own and require formal, structured intervention and support.[19]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[20]

[11] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[12] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[13] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited March 28, 2025) (hereinafter cited as "Fundamentals of the Marchman Act").
[14] *Id*.
[15] *See* chs. 394 and 397, F.S.
[16] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/services/samh/treatment (last visited March 28, 2025).
[17] *Id*.
[18] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[19] *Id*.
[20] *Id*.

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[21] intervention,[22] and clinical treatment services.[23]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[24] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.[25]

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted ss. 397.487 through 397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[26]

Day or Night Treatment with Community Housing

The DCF licenses "Day or Night Treatment" facilities both with and without community housing components. Day or night treatment programs provide substance use treatment as a service in a nonresidential environment, with a structured schedule of treatment and rehabilitative services.[27] Day or night treatment programs with community housing are intended for individuals who can

[21] Section 397.311(26)(c), F.S. "Prevention" is defined as "a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles". Substance abuse prevention is achieved through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments. *See also*, The DCF, *Substance Abuse: Prevention*, available at https://www.myflfamilies.com/services/samh/prevention-services (last visited March 28, 2025).
[22] Section 397.311(26)(b), F.S. "Intervention" is defined as "structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems."
[23] Section 397.311(26), F.S.
[24] Section 397.311(26)(a), F.S.
[25] *Id*.
[26] Chapter 2015-100, L.O.F.
[27] Section 397.311(26)(a)2., F.S.

benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day or 25 hours per week.[28]

Day or night treatment with community housing is appropriate for individuals who do not require structured, 24-hours-a-day, 7-days-a-week residential treatment.[29] The housing must be provided and managed by the licensed service provider, including room and board and any ancillary services such as supervision, transportation, and meals. Activities for day or night treatment with community housing programs emphasize rehabilitation and treatment services using multidisciplinary teams to provide integration of therapeutic and family services.[30] This component allows individuals to live in a supportive, community housing location while participating in treatment. Treatment must not take place in the housing where the individuals live, and the housing must be utilized solely for the purpose of assisting individuals in making a transition to independent living.[31] Individuals who are considered appropriate for this level of care:

- Would not have active suicidal or homicidal ideation or present a danger to self or others;
- Are able to demonstrate motivation to work toward independence;
- Are able to demonstrate a willingness to live in supportive community housing;
- Are able to demonstrate commitment to comply with rules established by the provider;
- Are not in need of detoxification or residential treatment; and
- Typically need ancillary services such as transportation, assistance with shopping, or assistance with medical referrals and may need to attend and participate in certain social and recovery oriented activities in addition to other required clinical services.[32]

Services provided by such programs may include:

- Individual counseling;
- Group counseling;
- Counseling with families or support system;
- Substance-related and recovery-focused education, such as strategies for avoiding substance use or relapse, information regarding health problems related to substance use, motivational enhancement, and strategies for achieving a substance-free lifestyle;
- Life skills training such as anger management, communication skills, employability skills, problem solving, relapse prevention, recovery management, decision-making, relationship skills, symptom management, and food purchase and preparation;
- Expressive therapies, such as recreation therapy, art therapy, music therapy, or dance (movement) therapy to provide the individual with alternative means of self-expression and problem resolution;
- Training or provision of information regarding health and medical issues;
- Employment or educational support services to assist individuals in becoming financially independent;
- Nutrition education; and
- Mental health services for the purpose of:

[28] Section 397.311(26)(a)3., F.S.
[29] Rule 65D-30.0081(1), F.A.C.
[30] *Id*.
[31] *Id*.
[32] *Id*.

- Managing individuals with disorders who are stabilized,
- Evaluating individuals' needs for in-depth mental health assessment,
- Training individuals to manage symptoms; and
- If the provider is not staffed to address primary mental health problems that may arise during treatment, the provider shall initiate a timely referral to an appropriate provider for mental health crises or for the emergence of a primary mental health disorder in accordance with the provider's policies and procedures.[33]

Each enrolled individual must receive a minimum of 25 hours of service per week, including:

- Counseling;
- Group counseling; or
- Counseling with families or support systems.[34]

Each provider is required to arrange for or provide transportation services, if needed and as appropriate, to clients who reside in community housing.[35] Each provider must have an awake, paid employee on the premises at all times at the treatment location when one or more individuals are present.[36] For adults, the provider must have a paid employee on call during the time when individuals are at the community housing location.[37] In addition, the provider must have an awake, paid employee at the community housing location at all times if individuals under the age of 18 are present.[38] No primary counselor may have a caseload that exceeds 15 individuals.[39] For individuals in treatment who are granted privilege to self-administer their own medications, provider staff are not required to be present for the self-administration.[40]

Application for Licensure

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted by the DCF.[41] Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.

[33] Rule 65D-30.0081(2), F.A.C.
[34] Rule 65D-30.0081(4), F.A.C.
[35] Rule 65D-30.0081(5), F.A.C.
[36] Rule 65D-30.0081(6), F.A.C.
[37] *Id*.
[38] *Id*.
[39] Rule 65D-30.0081(7), F.A.C.
[40] Rule 65D-30.0081(8), F.A.C.
[41] Section 397.403(1), F.S.

- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances.[42]
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant's ability to carry out its duties under this chapter and applicable rules.
- The names and locations of any recovery residences to which the applicant service provider plans to refer patients or from which the applicant service provider plans to accept patients.[43]

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

The DCF issues three types of licenses for substance abuse service providers: probationary, regular, and interim licenses.[44] A service provider can receive one license covering multiple types of services, but only for the specific locations and services listed on the license. If a provider wants to add new services, they must apply for approval before starting them, and if a provider relocates, they must inform the department and submit any required paperwork at least 30 days in advance. Offering services at an unapproved location is considered operating without a license, which can result in legal action and penalties. Licenses cannot be transferred to another organization. A transfer includes changes like selling a majority share of the business or handing over operations through a contract.

Probationary Licenses[45]

Probationary licenses are issued when a new applicant's services are not yet fully operational, but they have met most requirements. Probationary licenses last 90 days and cannot be renewed. The department monitors service quality during this time. If a provider fails to meet standards, the department can order them to stop operating immediately without going through a lengthy legal process.

Regular Licenses[46]

A provider can receive a regular license if they successfully complete the probationary period, are already licensed and applying for renewal, or are transitioning from an interim license after fixing compliance issues. To renew a regular license, an application must be submitted at least

[42] Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license. Section 397.403(1)(f), F.S.
[43] Section 397.403(1), F.S.
[44] Section 397.407, F.S., this paragraph.
[45] Section 397.407(7), F.S.
[46] Section 397.407(8), F.S.

60 days before the current license expires. If submitted less than 30 days before expiration, it may be denied.

Interim Licenses[47]
These are temporary licenses issued for up to 90 days when a provider is not fully compliant with regulations. Reasons for an interim license include significant violations of licensing standards, failure to provide proof of compliance with fire, safety, or health codes, or a provider facing license suspension or revocation. Interim licenses apply only to the service area that is out of compliance. They can be extended once for another 90 days if the provider faces extreme hardship and the issues were not their fault.

Inspections and Classifications of Violations

The DCF has the right to enter and inspect a licensed provider at any time to determine statutory and regulatory compliance and may inspect suspected unlicensed providers.[48] The DCF is required to accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited and the DCF receives the report of the accrediting organization.[49] A designated and authorized agent of the DCF may access the records of the individuals served by licensed service providers, but only for purposes of licensing, monitoring, and investigation.[50] The DCF's authorized agents may schedule periodic inspections of licensed service providers in order to minimize costs and the disruption of services, however they may inspect the facilities of any licensed service provider at any time.[51]

In an effort to coordinate inspections among agencies, the DCF is required to notify applicable state agencies of any scheduled licensure inspections of service providers jointly funded by the agencies.[52] The DCF is required to maintain as public information, available to any person upon request and upon payment of a reasonable charge for copying, copies of licensure reports of licensed providers.[53]

Rule violations are classified according to the nature of the violation and the gravity of its probable effect on an individual receiving substance abuse treatment.[54] Violations are classified on written notices as follows:

- Class "I" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines present an imminent danger or a substantial probability of death or serious physical or emotional harm. The condition or practice constituting a class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by the DCF, is required for correction. The DCF is required to impose an administrative fine for a cited class I violation. Fines are levied notwithstanding the correction of the violation.[55]

[47] Section 397.407(9), F.S.
[48] Section 397.411(1)(a), F.S.
[49] Section 397.411(2), F.S.
[50] Section 397.411(3), F.S.
[51] Section 397.411(4), F.S.
[52] Section 397.411(5), F.S.
[53] Section 397.411(6), F.S.
[54] Section 397.411(7), F.S.
[55] Section 397.411(7)(a), F.S.

- Class "II" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines directly threaten the physical or emotional health, safety, or security of the individual, other than class I violations. The DCF is required to impose an administrative fine for a cited class II violation. Fines are levied notwithstanding the correction of the violation.[56]
- Class "III" violations are those conditions or occurrences related to the operation and maintenance of a service component or to the treatment of an individual which the DCF determines indirectly or potentially threaten the physical or emotional health, safety, or security of the individual, other than class I or class II violations. The DCF is required to impose an administrative fine for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, the DCF may not impose a fine.[57]
- Class "IV" violations are conditions or occurrences related to the operation and maintenance of a service component or to required reports, forms, or documents that do not have the potential of negatively affecting an individual. These violations are of a type that the DCF determines do not threaten the health, safety, or security of an individual. The DCF is required to impose an administrative fine for a cited class IV violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, the DCF may not impose a fine.[58]

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[59] These residences offer no formal treatment and are, in some cases, self-funded through resident fees.

A recovery residence is defined as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[60]

Voluntary Certification of Recovery Residences and Administrators in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[61] Under the voluntary certification program, the DCF has approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery

[56] Section 397.411(7)(b), F.S.
[57] Section 397.411(7)(c), F.S.
[58] Section 397.411(7)(d), F.S.
[59] The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf (last visited March 28, 2025).
[60] Section 397.311(38), F.S.
[61] Sections 397.487–397.4872, F.S.

residences and the Florida Certification Board (the FCB) certifies recovery residence administrators.[62]

Credentialing entities must require prospective recovery residences to submit the following documents with a completed application and fee:

- A policy and procedures manual containing:
  - Job descriptions for all staff positions;
  - Drug-testing procedures and requirements;
  - A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed;
  - Policies to support a resident's recovery efforts; and
  - A good neighbor policy to address neighborhood concerns and complaints.
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;
- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.[63]

Patient Referrals

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator (CRRA).[64] There are certain exceptions that allow referrals to or from uncertified recovery residences, including any of the following:

- A licensed service provider under contract with a behavioral health managing entity.
- Referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals to, or accepted referrals from, a recovery residence with no direct or indirect financial or other referral relationship with the licensed service provider, and that is

[62] The DCF, *Recovery Residence Administrators and Recovery Residences,* available at https://www.myflfamilies.com/services/samh/recovery-residence-administrators-and-recovery-residences (last visited March 28, 2025).
[63] Section 397.487(3), F.S.
[64] Section 397.4873(1), F.S.

democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.[65]

Service providers are required to record the name and location of each recovery residence that the provider has referred patients to or received referrals from in the DCF's Provider Licensure and Designations System.[66] Prospective service providers must also include the names and locations of any recovery residences which they plan to refer patients to, or accept patients from, on their application for licensure.[67]

Residences managed by a certified recovery residence administrator approved for up to 100 residents and wholly owned or controlled by a licensed service provider may accommodate up to 150 residents under certain conditions.[68] These conditions include maintaining a service provider personnel-to-patient ratio of 1 to 8 and providing onsite supervision 24/7 with a personnel-to-resident ratio of 1 to 10. Additionally, administrators overseeing Level IV certified recovery residences with a personnel-to-resident ratio of 1 to 6 are not subject to limitations on the number of residents they may manage.

Privacy Rights of Individuals Receiving Substance Abuse Treatment

Section 397.501, F.S., establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel, and habeas corpus. Current law protects individual records and prohibits records of service providers to be disclosed without the written consent of the individual to whom they pertain except to specific persons (i.e., medical personnel in a medical emergency and service provider personnel if they need to know the information to carry out duties) and for certain reasons (i.e., law enforcement if the records are related to an individual's commission of a crime or if they apply to the reporting of incidents of suspected child abuse and neglect).[69]

Zoning and Land Use

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.[70] All development, both public and private, and all development orders[71] approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.[72] The Future Land Use Element in a comprehensive plan establishes a range of allowable uses and densities and

[65] Section 397.4873(2)(a)-(d), F.S.
[66] Section 397.4104(1), F.S.
[67] Section 397.403(1)(j), F.S.
[68] Section 397.4871(8)(c), F.S.
[69] Section 397.501(7), F.S.
[70] Section 163.3167(2), F.S.
[71] "Development order" means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.
[72] Section 163.3194(3), F.S

intensities over large areas, and the specific use and intensities for specific parcels within that range are decided by a more detailed, implementing zoning map.[73]

III. Effect of Proposed Changes:

Section 1 amends s. 397.403, F.S., to remove zoning pre-approval requirements for substance abuse provider licensing. Currently license applicants must demonstrate compliance with local zoning ordinances: for new licenses, proof of zoning compliance is mandatory before the Department of Children and Families can issue a probationary license; for service providers operating under a regular annual license, the statute allows an 18-month period from the expiration date of their regular license to meet local zoning requirements.

Section 2 amends s. 397.407, F.S., regarding the issue of licenses. The section provides that a license may be transferred to a new owner, while clarifying that transfer means either an event where a privately held licensee sells or otherwise transfers its ownership to a different individual or entity, or an event in which 51 percent or more of the ownership, shares, membership, or controlling interest in a licensee is transferred or otherwise assigned.

The section redefines the types of licenses to provide, generally, that a probationary license is what a new applicant receives between application and full operation, while an interim license is issued to an existing licensed service provider seeking to add services or additional levels of care at an existing or new location.

Section 3 amends s. 397.415, F.S. to provide that, rather than immediately removing service provider personnel arrested or found guilty of prohibited offenses, a service operator must simply notify the department within two days that a service provider no longer meets the level 2 screening standards set forth in s. 435.04, F.S., in order to avoid having their license denied, suspended, or revoked.[74]

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[73] Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

[74] Crimes that would result in no longer meeting level 2 screening standards reference herein, for which a provider would no longer need to immediately remove the service provider personnel, include failure to report child abuse, abandonment, or neglect, sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct, sexual misconduct with certain mental health patients and reporting of such sexual misconduct, fraud if the offense was a felony, adult abuse, neglect, or exploitation of aged persons or disabled adults, attempts, solicitation, and conspiracy to commit an offense listed in this subsection, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child, vehicular homicide, killing of an unborn child by injury to the mother, assault, battery, and culpable negligence if the offense was a felony, assault if the victim of the offense was a minor, aggravated assault, battery if the victim of the offense was a minor, aggravated battery, battery on staff of a detention or commitment facility or on a juvenile probation officer, kidnapping, false imprisonment, luring or enticing a child, taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings, carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person, human trafficking, human smuggling, exhibiting firearms or weapons within 1,000 feet of a school, possessing an electric weapon or device, destructive device, or other weapon on school property, sexual battery, prohibited acts of persons in familial or custodial authority, unlawful sexual activity with certain minors, female genital mutilation, prostitution, lewd and lascivious behavior, lewdness and indecent exposure and offenses against students by authority figures, arson, burglary, voyeurism if the offense is a felony, digital voyeurism if the offense is a felony, theft, robbery, and related crimes if the offense is a felony, fraudulent sale of controlled substances only if the offense was a felony, abuse, aggravated abuse, or neglect of an elderly person or disabled adult, lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult, exploitation of an elderly person or disabled adult if the offense was a felony, incest, child abuse, aggravated child

Section 4 amends s. 397.487, F.S., to preempt local governments such that certified recovery residences are deemed residential use for all local zoning ordinances, no local ordinance may prohibit or regulate recovery residences in a multifamily structure, and the establishment of recovery residences in all districts zoned multifamily residential must be permitted without zoning or land use change, and administratively approved without further action or hearing by the governing body.

The preemption does not apply where the recovery residence is adjacent to on two or more sides a parcel zoned for single family residential use within a development with at least 25 homes. The preemption does not apply to a provider that was not voluntarily certified on or before July 1, 2025; however the bill elsewhere provides for the transfer of license and certification.

The preemption includes a provision that a local government must reduce parking requirements for a proposed certified recovery residence by fifty percent if the property is located within one-quarter mile of an accessible transit stop.

Section 5 amends s. 397.4871, F.S., to provide that a certified recovery residence administrator for level IV certified recovery residence which maintains a personnel-to-resident ratio of 1 to 6 has no limitation on the number of residents it may manage. Currently the maximum allowed is 150 residents with a 1 to 8 ratio. The section also amends the 24/7 onsite supervision requirement to only apply during times when residents are at the residence.

Section 6 amends s. 397.501, F.S., to provide that an agency or division of the state may not transmit confidential names or identifying information it comes into possession of under its regulatory authority. It also provides that the freedom from liability afforded to persons acting in good faith, reasonably, and without negligence in connection with the preparation or execution of official documents as it relates to privacy and confidentiality does not extend to the illegal use or disclosure of trade secrets.

Section 7 amends s. 509.032, F.S., to provide that a recovery residence is deemed a nontransient use of land for purposes of all local zoning ordinances.

Section 8 establishes the Substance Abuse and Recovery Residence Efficiency Committee within the Department of Children and Families (DCF). This committee is tasked with evaluating current practices, identifying challenges, and recommending improvements related to substance abuse treatment and the operation of recovery residences. The goal is to ensure that recovery residences operate effectively, supporting individuals in recovery while integrating seamlessly

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abuse, or neglect of a child, contributing to the delinquency or dependency of a child, negligent treatment of children, sexual performance by a child, unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances, written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism, resisting arrest with violence, depriving a law enforcement, correctional, or correctional probation officer means of protection or communication, aiding in an escape, aiding in the escape of juvenile inmates in correctional institutions, obscene literature, poisoning food or water, prohibition on the purchase or sale of human organs and tissue, encouraging or recruiting another to join a criminal gang, drug abuse prevention and control only if the offense was a felony or if any other person involved in the offense was a minor, sexual misconduct with certain forensic clients and reporting of such sexual misconduct, inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm, escape, harboring, concealing, or aiding an escaped prisoner, introduction of contraband into a correctional facility, sexual misconduct in juvenile justice programs, and contraband introduced into detention facilities. Section 435.04, F.S.

into the broader healthcare system. To facilitate its work, the DCF will provide administrative and staff support services, including organizing meetings and maintaining records.

Membership and Structure
The committee consists of representatives from various stakeholders, including:

- A member of each house of the legislature,
- A member appointed by DCF,
- A member appointed by the Agency for Health Care Administration,
- The deputy secretary of the Agency for Health Care Administration tasked with oversight of the Division of Medicaid,
- A member appointed by the Commissioner of Insurance Regulation,
- A representative of a Level IV certified recovery residence, and
- The president of the Florida Association for Recovery Residences.

Members are appointed by the Secretary of the DCF based on their expertise and experience. To maintain continuity, initial appointments are staggered, with future appointments following standard terms. Committee members serve on a voluntary basis without compensation, though they may be reimbursed for travel expenses.

Duties and Responsibilities
The committee is responsible for reviewing existing regulations and standards for recovery residences, identifying barriers to effective integration, and recommending policy changes to improve quality and accessibility. Additionally, it aims to foster collaboration between recovery residences and substance abuse treatment providers by promoting best practices. The committee must meet at least quarterly, adhering to Florida's Sunshine Laws to ensure transparency and public participation.

Reporting and Oversight
By October 1, 2025, the committee must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. This report details the committee's findings, recommendations, and any proposed legislative or regulatory changes. Furthermore, a sunset provision is included, meaning the committee will be dissolved after December 31, 2025, unless renewed by legislative action.

Sections 9 to 16 reenact various statutes for the purpose of incorporation.

Section 17 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The overall effect of the bill may be to simplify the establishment and maintenance of a recovery residence, providing an indeterminate positive impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The sections related to recovery residences as approved use in residential zoned areas subject to administrative approval fail to detail the nature of that approval and how a local government is required to treat such a proposed action.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.403, 397.407, 397.415, 397.487, 397.4871, 397.501, 509.032, 397.4104, 397.4873, 394.47891, 394.47892, 395.3025, 397.334, 397.752, and 400.494.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (15) is added to section 397.487, Florida Statutes, to read:

397.487 Voluntary certification of recovery residences.—

(15)(a) A certified recovery residence is deemed a nontransient residential use for purposes of all local zoning ordinances. A local law, ordinance, or regulation may not

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prohibit certified recovery residences or regulate the duration or frequency of use of a certified recovery residence in a multifamily structure.

(b) A municipality or county shall allow the establishment of a certified recovery residence in all districts zoned multifamily residential and shall allow a structure originally constructed and permitted for multifamily purposes to be used as a certified recovery residence, allowing up to two residents per bedroom, without obtaining a zoning or a land use change, a special exception, a conditional use approval, a variance, or a comprehensive plan amendment for the zoning and densities authorized under this subsection.

(c) A municipality or a county may deny the establishment of a Level IV certified recovery residence if the proposed use is adjacent to, or on two or more sides of, a parcel zoned for single-family residential use and is within a single-family residential development with at least 25 contiguous single-family homes. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but the term does not include properties separated by a public road.

(d) This subsection applies to certified recovery residence providers that were voluntarily certified by the credentialing entity pursuant to this section on or before July 1, 2025.

Section 2. Paragraph (c) of subsection (8) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(8)

(c) Notwithstanding paragraph (b), a Level IV certified

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recovery residence operating as community housing as defined in s. 397.311(9), which residence is actively managed by a certified recovery residence administrator approved for 100 residents under this section and is wholly owned or controlled by a licensed service provider, may:

1. Actively manage up to 150 residents so long as the licensed service provider maintains a service provider personnel-to-patient ratio of 1 to 8 and maintains onsite supervision at the residence during times when residents are at the residence ~~24 hours a day, 7 days a week,~~ with a personnel-to-resident ratio of 1 to 10.

2. Actively manage up to 500 residents, so long as the licensed service provider maintains a service provider personnel-to-patient ratio of 1 to 8 and maintains onsite supervision at the residence during times when residents are at the residence with a personnel-to-resident ratio of 1 to 6.

A certified recovery residence administrator who has been removed by a certified recovery residence due to termination, resignation, or any other reason may not continue to actively manage more than 50 residents for another service provider or certified recovery residence without being approved by the credentialing entity.

Section 3. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

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An act relating to certified recovery residences; amending s. 397.487, F.S.; providing that a recovery residence is deemed a nontransient residential use of land for a specified purpose; prohibiting a local law, ordinance, or regulation from prohibiting or regulating a recovery residence in a multifamily structure; requiring a county or a municipality to allow certain certified recovery residences in specified zoned districts without the need to obtain changes in certain zoning or land use; specifying the allowable use of such certified recovery residences; authorizing a municipality or a county to deny the establishment of a certified Level IV recovery residence if the proposed use is adjacent to, or on two or more sides of, a parcel zoned for a specified use and within a certain single-family residential development; defining the term "adjacent to"; providing applicability; amending s. 397.4871, F.S.; providing that the personnel-to-resident ratio for a certified recovery residence must be met only when the residents are at the residence; providing that a certified recovery residence administrator for Level IV certified recovery residences which maintains a specified personnel-to-patient ratio has a limitation on the number of residents it may manage; providing an effective date.

By Senator Gruters

22-00993-25 2025954__

A bill to be entitled

An act relating to recovery residences; amending s. 397.403, F.S.; revising requirements for applicants for certified recovery residence licenses; amending s. 397.407, F.S.; providing that interim licenses may be issued by the Department of Children and Families to a new owner of a recovery residence; revising the definition of the term "transfer"; requiring the department to issue an interim license within a specified timeframe; providing that the department has a specified timeframe after receiving an application to review it for completeness; prohibiting the department from issuing an interim license when doing so would place the health, safety, or welfare of individuals at risk; prohibiting the expiration of an interim license; requiring that an interim license be converted to a regular license with a specified timeframe; authorizing the department to issue a probationary license to an existing licensed service provider if the department makes specified findings; providing applicability; providing that a probationary license, rather than an interim license, expires 90 days after it is issued; amending s. 397.415, F.S.; revising conditions under which the department may deny, suspend, or revoke the license of a service provider or the operation of any service component or location identified on the license; amending s. 397.487, F.S.; requiring that Level IV certified recovery residence providers undergo a recertification

audit at a certain interval, subject to annual dues payments being made; providing that only the department may suspend or revoke a Level IV certified recovery residence provider's license; deleting a requirement that a certified recovery residence must immediately remove a person who is arrested for or convicted of a certain criminal offense; providing that a recovery residence is deemed a nontransient residential use of land for a specified purpose; prohibiting a local law, ordinance, or regulation from prohibiting or regulating a recovery residence in a multifamily structure; requiring a county or a municipality to allow certain certified recovery residences in specific zoned districts, without the need to obtain changes in certain zoning or land use; providing that certified recovery residences in multifamily structures are administratively approved and no further action by the governing body of the municipality or county is required under certain circumstances; authorizing a municipality or a county to deny the establishment of a certified Level IV recovery residence if the proposed use is adjacent to, or on two or more sides of, a parcel zoned for a specified use and within a certain single-family residential development; defining the term "adjacent to"; requiring that a municipality or a county reduce any local parking requirements for a proposed certified recovery residence by a specified percentage under certain circumstances; providing applicability;

providing that certified recovery residences that provide housing to patients must maintain such patients' confidential records; amending s. 397.4871, F.S.; providing that the personnel-to-resident ratio for a certified recovery residence must be met only when the residents are at the residence; providing that a certified recovery residence administrator for Level IV certified recovery residences which maintains a specified personnel-to-patient ratio has no limitation on the number of residents it may manage; amending s. 397.501, F.S.; prohibiting an agency or a division from transmitting certain records to any other agency, division, or third party; providing an exception; revising liability for licensed service providers; amending s. 509.032, F.S.; providing construction; creating the Substance Abuse and Recovery Residence Efficiency Committee within the Department of Children and Families; requiring the department to provide the committee with administrative and staff support services; providing the purpose of the committee; providing the membership of the committee; requiring that appointments to the committee be made by a specified date; providing that each member serves at the pleasure of the person or body that appointed the member; requiring the committee to select a chair; requiring the committee to convene by a specified date and to meet monthly or upon the call of the chair; providing the duties of the committee; requiring the committee to submit a

report to the Governor and the Legislature by a specified date; providing for future legislative review and repeal; reenacting s. 397.4104(2), F.S., relating to record of recovery residences used by service providers, to incorporate the amendment made to s. 397.415, F.S., in a reference thereto; reenacting s. 397.4873(1) and (7), F.S., relating to referrals to or from recovery residences, prohibitions, and penalties, to incorporate the amendments made to ss. 397.415, 397.487, and 397.4871, F.S., in references thereto; reenacting ss. 397.47891(12)(c), 394.47892(8)(c), 395.3025(3), 397.334(10)(c), 397.752, and 400.494(1), F.S., relating to veterans treatment court programs; mental health court programs; patient and personnel records, copies, examination; treatment-based drug court programs; scope of part; and information about patients confidential, respectively, to incorporate the amendment made to s. 397.501, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 397.403, Florida Statutes, is amended to read:

397.403 License application.—

(1) Applicants for a license under this chapter must apply to the department on forms provided by the department and in accordance with rules adopted by the department. Applications

must include at a minimum:

(f) Proof of satisfactory fire, safety, and health inspections~~, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license~~.

Section 2. Subsections (6), (7), and (9) of section 397.407, Florida Statutes, are amended to read:

397.407 Licensure process; fees.—

(6) The department may issue probationary, regular, and interim licenses. The department may issue one license for all service components operated by a service provider and defined pursuant to s. 397.311(27). The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for the addition of any service components and obtain approval before initiating additional services. The licensed service provider must notify the department and provide any required documentation at least 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary, interim, and regular licenses may be issued only after all required information has been submitted. A

license may ~~not~~ be transferred to a new owner consistent with the procedures set forth in s. 408.807. As used in this subsection, the term "transfer" means: ~~includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.~~

(a) An event in which a privately held licensee sells or otherwise transfers its ownership to a different individual or entity, as evidenced by a change in federal employer identification number or taxpayer identification number; or

(b) An event in which 51 percent or more of the ownership, shares, membership, or controlling interest of a licensee is in any manner transferred or otherwise assigned. A change solely in the management company or board of directors is not a change of ownership.

(7) Upon receipt of a complete application, payment of applicable fees, and a demonstration of substantial compliance with all applicable statutory and regulatory requirements, the department may issue a probationary license to a new service provider applicant with services that are not yet fully operational. The department shall ~~may not~~ issue an interim license within 30 calendar days after receipt of a complete application from an existing licensed service provider seeking to add services or one or more additional levels of care at an existing licensed location or at a new location. The department has 15 calendar days after receiving an application to review it for completeness. The department may not issue a probationary or an interim license when doing so would place the health, safety, or welfare of individuals at risk. A probationary license

expires 90 days after issuance and may not be reissued. An interim license issued pursuant to this part may not expire and must be converted to a regular license within 80 days after issuance. During the ~~probationary~~ period of time a licensee is providing services under a probationary license, the department shall monitor the delivery of services. Notwithstanding s. 120.60(5), the department may order a probationary licensee to cease and desist operations at any time it is found to be substantially out of compliance with licensure standards. This cease-and-desist order is exempt from the requirements of s. 120.60(6).

(9) The department may issue a probationary ~~an interim~~ license to an existing licensed ~~a~~ service provider for a period established by the department which does not exceed 90 days if the department finds that:

(a) A service component of the provider is in substantial noncompliance with licensure standards;

(b) The service provider has failed to provide satisfactory proof of conformance to fire, safety, or health requirements; or

(c) The service provider is involved in license suspension or revocation proceedings.

A probationary ~~An interim~~ license applies only to the licensable service component of the provider's services which is in substantial noncompliance with statutory or regulatory requirements. A probationary ~~An interim~~ license expires 90 days after it is issued; however, it may be reissued once for an additional 90-day period in a case of extreme hardship in which the noncompliance is not attributable to the licensed service

provider. If the service provider is appealing the final disposition of license suspension or revocation proceedings, the court before which the appeal is taken may order the extension of the probationary ~~interim~~ license for a period specified in the order.

Section 3. Paragraph (d) of subsection (1) of section 397.415, Florida Statutes, is amended to read:

397.415 Denial, suspension, and revocation; other remedies.—

(1) If the department determines that an applicant or licensed service provider or licensed service component thereof is not in compliance with all statutory and regulatory requirements, the department may deny, suspend, revoke, or impose reasonable restrictions or penalties on the license or any portion of the license. In such case:

(d) The department may deny, suspend, or revoke the license of a service provider or may suspend or revoke the license as to the operation of any service component or location identified on the license for:

1. False representation of a material fact in the license application or omission of any material fact from the application.

2. An intentional or negligent act materially affecting the health or safety of an individual receiving services from the provider.

3. A violation of this chapter or applicable rules.

4. A demonstrated pattern of deficient performance.

5. Failure to timely notify the department of ~~immediately remove~~ service provider personnel subject to background

screening pursuant to s. 397.4073 who no longer meet the Level 2 screening standards set forth in s. 435.04 ~~are arrested or found guilty of, regardless of adjudication, or have entered a plea of nolo contendere or guilty to any offense prohibited under the screening standard and notify the department~~ within 2 days after an event or circumstance that causes such personnel to fail to meet such standards ~~such removal~~, excluding weekends and holidays.

Section 4. Subsection (7) and paragraphs (a) and (d) of subsection (8) of section 397.487, Florida Statutes, are amended, and subsections (15) and (16) are added to that section, to read:

397.487 Voluntary certification of recovery residences.—

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed. A Level IV certified recovery residence provider must undergo a recertification audit once every 3 years, subject to annual dues to the Florida Association of Recovery Residences.

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

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

time period specified, except for a Level IV certified recovery residence provider, for which only the department is authorized to suspend or revoke a certification following the licensure procedures pursuant to chapter 120.

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

(15)(a) A certified recovery residence is deemed a nontransient residential use of land for purposes of all local zoning ordinances. A local law, ordinance, or regulation may not prohibit certified recovery residences or regulate the duration or frequency of use of a certified recovery residence in a multifamily structure.

(b) Notwithstanding any other law or local ordinance or regulation to the contrary, a municipality or county must allow the establishment of a certified recovery residence in all districts zoned multifamily residential as an allowable use and must allow a structure originally constructed and permitted for multifamily purposes to be used as a certified recovery residence, allowing up to two residents per bedroom, without the need to obtain a zoning or a land use change, a special

exception, a conditional use approval, a variance, or a comprehensive plan amendment for the zoning and densities authorized under this subsection.

(c) All certified recovery residences in multifamily structures are administratively approved and no further action by the governing body of the municipality or county is required if the use satisfies this section.

(d) A municipality or a county may deny the establishment of a Level IV certified recovery residence if the proposed use is adjacent to, or on two or more sides of, a parcel zoned for single-family residential use and is within a single-family residential development with at least 25 contiguous single-family homes. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but the term does not include properties separated by a public road.

(e) A municipality or a county must reduce any local parking requirements for a proposed certified recovery residence by 50 percent if the property is located within one-quarter mile of a transit stop and the transit stop is accessible from the residence.

(f) This section does not apply to any certified recovery residence provider that was not voluntarily certified by the certifying entity in s. 397.487 on or before July 1, 2025.

(16) Certified recovery residences that provide housing to patients undergoing treatment must comply with and be subject to s. 397.501(7) regarding confidential information pertaining to such patients.

Section 5. Paragraph (c) of subsection (8) of section

397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(8)

(c) Notwithstanding paragraph (b), a Level IV certified recovery residence operating as community housing as defined in s. 397.311(9), which residence is actively managed by a certified recovery residence administrator approved for 100 residents under this section and is wholly owned or controlled by a licensed service provider, may actively manage up to 150 residents so long as the licensed service provider maintains a service provider personnel-to-patient ratio of 1 to 8 and maintains onsite supervision at the residence 24 hours a day, 7 days a week, during times when residents are at the residence and with a personnel-to-resident ratio of 1 to 10. A certified recovery residence administrator for Level IV certified recovery residences which maintains a personnel-to-resident ratio of 1 to 6, pursuant to this section, has no limitation on the number of residents it may manage. A certified recovery residence administrator who has been removed by a certified recovery residence due to termination, resignation, or any other reason may not continue to actively manage more than 50 residents for another service provider or certified recovery residence without being approved by the credentialing entity.

Section 6. Paragraph (a) of subsection (7) and subsection (10) of section 397.501, Florida Statutes, are amended to read:

397.501 Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must

ensure the protection of such rights.

(7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:

1. To medical personnel in a medical emergency.

2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.

3. To the secretary of the department or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.

4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality regulations. When an agency or a division of the state comes into possession of such records under its regulatory authority, such records may not be transmitted to any other

government agency or third party for any purpose except for the purpose of the agency or division collecting such records.

5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.

(10) LIABILITY AND IMMUNITY.—

(a) A licensed service provider or a service provider personnel who violate or abuse any right or privilege of an individual under this chapter are liable for damages as determined by law.

(b) All persons acting in good faith, reasonably, and without negligence in connection with the preparation or execution of petitions, applications, certificates, or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of a person under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts, except for the illegal use or disclosure of trade secrets as defined in s. 812.081 and chapter 688.

Section 7. Paragraph (d) is added to subsection (7) of section 509.032, Florida Statutes, to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(d) This chapter may not be construed to authorize the department to regulate certified recovery residences pursuant to ss. 397.311 and 397.487. A recovery residence is deemed a

nontransient residential use of land for purposes of all local zoning ordinances.

Section 8. Substance Abuse and Recovery Residence Efficiency Committee.—

(1) CREATION.—The Substance Abuse and Recovery Residence Efficiency Committee, a committee as defined in s. 20.03(5), Florida Statutes, is created within the Department of Children and Families. The department shall provide administrative and staff support services relating to the functions of the committee.

(2) PURPOSE.—The purpose of the committee is to quickly identify and remedy issues related to the treatment, reimbursement, certification, and licensure of substance abuse treatment facilities licensed under chapter 397, Florida Statutes, and operating in this state.

(3) MEMBERSHIP; MEETINGS.—

(a) The committee is composed of the following members:

1. A member of the Senate, appointed by the President of the Senate.

2. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. A member appointed by the secretary of the Department of Children and Families.

4. A member appointed by the secretary of the Agency for Health Care Administration.

5. The deputy secretary of the Agency for Health Care Administration or other member of the agency tasked with oversight of the Division of Medicaid, or his or her designee.

6. A member appointed by the Commissioner of Insurance

Regulation.

7. A representative of a Level IV certified recovery residence, as defined in s. 397.311, Florida Statutes, appointed by the Secretary of the Agency for Health Care Administration.

8. The President of the Florida Association of Recovery Residences, upon approval by the association board.

(b) Appointments to the committee must be made by August 1, 2025. Each member serves at the pleasure of the official or body that appointed the member. A vacancy on the committee must be filled in the same manner as the original appointment.

(c) The committee shall select a member as chair at its first meeting.

(d) The committee shall convene no later than August 15, 2025. The committee shall meet monthly or upon the call of the chair. The committee may hold its meetings through teleconference or other electronic means.

(4) DUTIES.—The duties of the committee include all of the following:

(a) Analyzing the current regulatory framework to determine areas of inefficiency.

(b) Identifying issues that impede the effective treatment of individuals who have a substance use disorder.

(c) Assessing the relationship between substance abuse treatment providers and public and private payors.

(d) Assessing the comprehensiveness and effectiveness of existing policies and procedures for oversight of licensed substance abuse treatment providers.

(e) Evaluating the state's approaches to agency jurisdiction over substance abuse treatment and its

reimbursement, and specifically whether it is appropriate for the Department of Children and Families to maintain jurisdiction over substance abuse programs or treatment and recovery residence providers.

(f) Determining actions that can be taken under the respective agencies' existing rulemaking authority to alleviate any issues that the committee has identified.

(g) Determining legislative action that must be taken to alleviate issues that the committee has identified for which the respective agencies do not have the necessary rulemaking authority.

(h) Determining legislative action that would transfer licensure and regulation of substance abuse treatment to the Agency for Health Care Administration.

(5) REPORT.—By October 1, 2025, the committee shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that compiles the findings and recommendations of the committee.

(6) REPEAL.—This section is repealed December 31, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 9. For the purpose of incorporating the amendment made by this act to section 397.415, Florida Statutes, in a reference thereto, subsection (2) of section 397.4104, Florida Statutes, is reenacted to read:

397.4104 Record of recovery residences used by service providers.—

(2) Beginning July 1, 2022, a licensed service provider that violates this section is subject to an administrative fine

of $1,000 per occurrence. The department may suspend or revoke a service provider's license pursuant to s. 397.415 for repeat violations of this section.

Section 10. For the purpose of incorporating the amendments made by this act to sections 397.415, 397.487, and 397.4871, Florida Statutes, in references thereto, subsections (1) and (7) of section 397.4873, Florida Statutes, are reenacted to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(1) A service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

(7) A licensed service provider that violates this section is subject to an administrative fine of $1,000 per occurrence. If such fine is imposed by final order of the department and is not subject to further appeal, the service provider shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If the service provider does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the service provider's license. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415. The department shall establish a mechanism no later than January 1, 2024, for the imposition and collection of

fines for violations under this section.

Section 11. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, paragraph (c) of subsection (12) of section 394.47891, Florida Statutes, is reenacted to read:

394.47891 Veterans treatment court programs.—

(12) PUBLIC RECORDS EXEMPTION.—

(c) If such confidential and exempt information is a substance abuse record of a service provider that pertains to the identity, diagnosis, or prognosis of or provision of services to a person, such information may be disclosed pursuant to s. 397.501(7).

Section 12. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, paragraph (c) of subsection (8) of section 394.47892, Florida Statutes, is reenacted to read:

394.47892 Mental health court programs.—

(8)

(c) If such confidential and exempt information is a substance abuse record of a service provider that pertains to the identity, diagnosis, and prognosis of or provision of services to a person, such information may be disclosed pursuant to s. 397.501(7).

Section 13. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, subsection (3) of section 395.3025, Florida Statutes, is reenacted to read:

395.3025 Patient and personnel records; copies; examination.—

(3) This section does not apply to records of substance abuse impaired persons, which are governed by s. 397.501.

Section 14. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, paragraph (c) of subsection (10) of section 397.334, Florida Statutes, is reenacted to read:

397.334 Treatment-based drug court programs.—

(10)

(c) Records of a service provider which pertain to the identity, diagnosis, and prognosis of or provision of service to any person shall be disclosed pursuant to s. 397.501(7).

Section 15. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, section 397.752, Florida Statutes, is reenacted to read:

397.752 Scope of part.—An inmate’s substance abuse service records are confidential in accordance with s. 397.501(7). No other provision of parts I-VII of this chapter applies to inmates except as indicated by the context or specified.

Section 16. For the purpose of incorporating the amendment made by this act to section 397.501, Florida Statutes, in a reference thereto, subsection (1) of section 400.494, Florida Statutes, is reenacted to read:

400.494 Information about patients confidential.—

(1) Information about patients received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection shall be confidential and exempt from the provisions of s. 119.07(1) and shall only be disclosed to any person, other than the patient,

as permitted under the provisions of 45 C.F.R. ss. 160.102, 160.103, and 164, subpart A, commonly referred to as the HIPAA Privacy Regulation; except that clinical records described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be disclosed as authorized in those sections.

Section 17. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Stan McClain, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 5, 2025

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

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Joe Gruters

Senator Joe Gruters
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1164
INTRODUCER:	Senator Leek
SUBJECT:	Delivery of Notices from Landlords to Tenants
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Favorable**
2.	Shuler	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 1164 allows a landlord to deliver any notice required by the Florida Residential Landlord and Tenant Act to a tenant by e-mail if:

- The tenant signs an addendum to his or her rental agreement agreeing to the delivery of notices by email; and
- The tenant provides a valid e-mail address for this purpose.

Under the bill, notices delivered by e-mail in accordance with the bill are deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable. The bill does not preclude the service of notices by any other means authorized by law.

Likewise, the bill allows a landlord to deliver notice to a nonresidential tenant via e-mail before removing the tenant from the premises for nonpayment of rent or for holding over without permission after failing to cure a material breach of the lease or oral agreement.

The bill takes effect July 1, 2025.

II. Present Situation:

Landlord and Tenant Relationship

Chapter 83, F.S., which governs landlord and tenant relations, is divided into three parts:

- Part I, which governs nonresidential tenancies not governed by Part II.[1]
- Part II, the Florida Residential Landlord and Tenant Act, which governs residential tenancies.[2]

[1] Chapter 83, Part I, F.S. (encompassing ss. 83.001-83.251, F.S.); *see also* s. 83.001, F.S. (providing same).
[2] Chapter 83, Part II, F.S. (encompassing ss. 83.40-83.683, F.S.).

- Part III, the Self-Storage Facility Act, which governs self-service storage spaces.[3]

Florida Residential Landlord and Tenant Act

The Florida Residential Landlord and Tenant Act governs the rights and responsibilities of both landlords and tenants in connection with the rental of dwelling units (i.e. residential tenancies).[4] For purposes of the Act, "dwelling unit" means:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.[5]

Notably, the Act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, in which the buyer has paid at least 12 months' rent or a contract in which the buyer has paid at least one month's rent and a deposit of at least 5 percent of the purchase price of the property.
- Transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or in a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.[6]

Significant provisions of the Act include provisions relating to:

- Unconscionable rental agreements or provisions.[7]
- Rent and duration of tenancies.[8]
- Prohibited provisions in rental agreements.[9]
- The landlord's obligation to maintain the premises.[10]
- The tenant's obligation to maintain the dwelling unit.[11]
- The landlord's access to a dwelling unit.[12]
- Termination of the tenancy.[13]

[3] Chapter 83, Part III, F.S. (encompassing ss. 83.801-83.809, F.S.).
[4] Section 83.41, F.S.; *but see* s. 83.42, F.S. (excluding from the Act's scope certain kinds of residencies).
[5] Section 83.43(5), F.S.; *but see* s. 83.42, F.S. (excluding certain facilities and occupancies).
[6] Section 83.42, F.S.
[7] Section 83.45, F.S.
[8] Section 83.46, F.S.
[9] Section 83.47, F.S.
[10] Section 83.51, F.S.
[11] Section 83.52, F.S.
[12] Section 83.53, F.S.
[13] Section 83.46(2) or (3), F.S., (providing for the durations of rental agreements); s, 83.57, F.S., (providing for the termination of tenancies without specific terms); s. 83.56(4) (providing additional notice requirements); and s. 83.575(1), F.S. (providing for the termination of tenancies with specific terms).

- Enforcement, damages, and attorney fees.[14]

Delivery of Notices

State law requires landlords to deliver written notice to tenants in several different situations.

For example, with respect to residential tenancies, written notice to the tenant is required:

- Whenever a landlord confirms landlord's receipt of advance rent or a security deposit, or a change in the manner or location in which the landlord is holding the advance rent or security deposit. The notice must be given in person or by mail to the tenant.[15] The landlord must also give written notice by certified mail to the tenant's last known mailing address if the landlord intends to impose a claim on tenant's security deposit.[16]
- Whenever a landlord discloses or changes name and address. The notice must be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.[17]
- Whenever a landlord terminates a rental agreement with the tenant. Service of the written notice must be made by mailing or delivering a true copy of the notice to the tenant, or if the tenant is absent from the premises, by leaving a copy at the premises.[18]

With respect to nonresidential tenancies, written notice to the tenant is required:

- Before a landlord may remove the tenant from the premises for nonpayment of rent. Service of the written notice must be by delivery of a true copy to the tenant, or if the tenant is absent from the rented premises, by leaving a copy at the premises.[19]
- Before a landlord may remove the tenant from the premises for holding over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent. In the absence of a lease provision prescribing the method for serving written notices, service must be by mail, hand delivery, or if the tenant is absent from the rental premises or the address designated by the lease, by posting.[20]

III. Effect of Proposed Changes:

The bill creates s. 83.505, F.S., which authorizes a landlord to deliver any notice required by the Florida Residential Landlord and Tenant Act to a tenant by e-mail if the tenant:

- Signs an addendum to his or her rental agreement specifically agreeing to the delivery of notices by e-mail; and
- Provides a valid e-mail address for such purpose.

Under the bill, a notice delivered by e-mail in accordance with the new statute is deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable. The landlord

[14] Section 83.54 (providing for the enforcement of rights and duties); s. 83.48, F.S., (providing for attorney fees); s. 83.55, F.S. (providing a right of recovery for damages).
[15] Section 83.49(2), F.S. The requirement does not apply to any landlord who rents fewer than 5 individual dwelling units. *Id.* Additionally, the lease must include a disclosure advising the tenant regarding the written notice. *Id.*
[16] Section 83.49(3), F.S.
[17] Section 83.50, F.S.
[18] Section 83.56(4), F.S.
[19] Section 83.20(2), F.S.
[20] Section 83.20(3), F.S.

must maintain a copy of any notice sent by e-mail, along with evidence of transmission. The bill does not preclude the service of notices by any other means authorized by law.

In addition to making certain conforming changes to the Act,[21] the bill also revises s. 83.20, F.S., regarding causes for the removal of tenants. As revised by the bill, that section allows a landlord to deliver notice to a nonresidential tenant via e-mail consistent with the new statute, before removing the tenant for nonpayment of rent or for holding over without permission after failing to cure a material breach of the lease or oral agreement.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate positive fiscal impact on landlords. If their tenants agree to receive service of notices by e-mail, landlords will save the costs associated with delivering written notices in person or by mail.

[21] Specifically, the bill amends ss. 83.49 (requiring landlord to give tenant written notice confirming receipt of tenant's advance payment or security deposit, or a change in how the landlord is holding the advance rent or security deposit), 83.50 (requiring the landlord to give tenant written notice disclosing or changing landlord's name and address), 83.56 (requiring the landlord notice to give tenant written notice prior to terminating the rental agreement), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 5 of the bill amends s. 83.56(4) to make a conforming change authorizing delivery of notices by e-mail related to termination of a rental agreement. However, this applies to subsection (1) which references a written notice by a *tenant* to a *landlord*. Depending on the intent, the allowance for e-mail delivery notices should be revised to allow tenants to also deliver notices by email, or s. 83.56(4) should be amended in a manner to preserve the mail or delivery requirements in existing law for written notices made pursuant to subsection (1).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.20, 83.49, 83.50, and 83.56.

This bill creates section 83.505 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Leek) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 83.505, Florida Statutes, is created to read:

83.505 Electronic delivery of notices.—

(1) A landlord or tenant may electronically deliver via an e-mail address any notices required under this part to the other party if the parties have signed an addendum to the rental

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agreement, in substantially the following form, specifically agreeing to the electronic delivery of notices and providing a valid e-mail address for such purpose:

Landlord election:

☐ I ...(name)..., the landlord or the landlord's agent, agree to receive notices required by the rental agreement or under part II of chapter 83, Florida Statutes, from the tenant by e-mail. I designate the following e-mail address for receipt of notices from the tenant: ...(landlord's or landlord's agent's e-mail address)....

☐ I do not agree to receive notices by e-mail.

Tenant election:

☐ I ...(name)..., the tenant, agree to receive notices required by the rental agreement or under part II of chapter 83, Florida Statutes, from the landlord by e-mail. I designate the following e-mail address for receipt of notices from the landlord: ...(tenant's e-mail address)....

☐ I do not agree to receive notices by e-mail.

(2) A party who agrees to electronic delivery may revoke such agreement at any time by providing written notice to the other party. Such revocation takes effect upon delivery of the written notice to the other party and does not affect the validity of any notice previously sent by e-mail.

(3) A party may update the e-mail address designated for electronic delivery at any time by providing written notice to the other party specifying the new e-mail address. The update

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takes effect upon delivery of the written notice to the other party.

(4) A notice sent electronically pursuant to this section is deemed delivered at the time it is sent, unless the e-mail is returned to the sender as undeliverable.

(5) The sender of the e-mail must maintain a copy of any notice sent electronically and evidence of the transmission of the e-mail.

(6) This section does not preclude service of notices by any other means permitted by law.

Section 2. Paragraphs (a) and (d) of subsection (2), paragraph (a) of subsection (3), and subsections (4), (5), (8), and (9) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of

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rent when due. The written notice must:

(a) Be given in person or delivered by mail or e-mail in accordance with s. 83.505 to the tenant.

(d) Contain the following disclosure:

YOUR RENTAL AGREEMENT ~~LEASE~~ REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST PROVIDE YOU WRITTEN ~~MAIL YOU~~ NOTICE IN PERSON, BY MAIL, OR BY E-MAIL IN ACCORDANCE WITH SECTION 83.505, FLORIDA STATUTES, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S WRITTEN NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY PROVIDE ~~MAIL~~ YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

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THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the rental agreement ~~lease~~, if the landlord does not intend to impose a claim on the security deposit, the landlord must ~~shall have 15 days to~~ return the security deposit together with interest if otherwise required within 15 days after the termination of the rental agreement. If the landlord intends to impose a claim on the deposit, ~~or~~ the landlord must, within 30 days after the termination of the rental agreement, provide ~~shall have 30 days to give~~ the tenant written notice by certified mail to the tenant's last known mailing address or by e-mail in accordance with s. 83.505 of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The written notice must ~~shall~~ contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of .... upon your security deposit, due to ..... It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15

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days after ~~from~~ the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to ...(landlord's address)....

If the landlord fails to give the required written notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after returning ~~return of~~ the security deposit to the tenant.

(4) ~~The provisions of~~ This section does ~~do~~ not apply to transient rentals by hotels or motels as defined in chapter 509 or~~; nor do they apply~~ in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written rental agreement ~~lease~~, any tenant who vacates or abandons the premises before ~~prior to~~ the expiration of the term specified in the rental agreement ~~written lease~~, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, must ~~shall~~ give at least 7 days' written notice by certified mail or personal delivery to the landlord before

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~~prior to~~ vacating or abandoning the premises, which notice must ~~shall~~ include the address where the tenant may be reached. Failure to give such notice relieves ~~shall relieve~~ the landlord of the notice requirement of paragraph (3)(a) but does ~~shall~~ not waive any right the tenant may have to the security deposit or any part of it.

(8) Any person licensed under ~~the provisions of~~ s. 509.241, unless excluded by the provisions of this part, who fails to comply with ~~the provisions of~~ this part is ~~shall be~~ subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord must ~~shall~~ pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, a landlord is not required to pay interest to ~~no interest shall be due~~ a tenant who wrongfully terminates his or her tenancy before ~~prior to~~ the end of the rental term.

Section 3. Section 83.50, Florida Statutes, is amended to read:

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive

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notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto must ~~shall~~ be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address, or such notices may be sent by e-mail in accordance with s. 83.505.

Section 4. Paragraph (a) of subsection (2) of section 83.51, Florida Statutes, is amended to read:

83.51 Landlord's obligation to maintain premises.—

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. If the tenant must vacate ~~When vacation of~~ the premises ~~is required~~ for such extermination, the landlord is not liable for damages but must ~~shall~~ abate the rent. The landlord must provide 7 days' written notice, in person, by mail, or by e-mail in accordance with s. 83.505, to the tenant if the tenant must temporarily vacate the premises ~~for a period of time not to exceed 4 days, on 7 days' written notice, if necessary,~~ for extermination pursuant to this subparagraph. A tenant is only required to vacate the premises for a period of time not to exceed 4 days.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

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Section 5. Subsection (4) of section 83.56, Florida Statutes, is amended to read:

83.56 Termination of rental agreement.—

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing, delivering ~~or delivery of~~ a true copy thereof, e-mailing in accordance with s. 83.505, or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the rental agreement ~~lease~~.

Section 6. Subsections (1) and (2) of section 83.575, Florida Statutes, are amended to read:

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision also requires the landlord to notify the tenant in a manner prescribed by s. 83.56(4) within such notice period if the rental agreement will not be renewed.~~; however,~~ A rental agreement may not require less than 30 days' notice or more than 60 days' notice from either the tenant or the landlord.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the rental agreement ~~lease~~

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and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant in a manner prescribed by s. 83.56(4) within 15 days before the start of the notification period contained in the rental agreement ~~lease~~. The written notice must ~~shall~~ list all fees, penalties, and other charges applicable to the tenant under this subsection.

Section 7. This act shall take effect July 1, 2025.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to electronic delivery of notices between landlords and tenants; creating s. 83.505, F.S.; authorizing a landlord or tenant to electronically deliver notices to the other party if certain conditions are met; requiring that an addendum to a rental agreement be in a specified form; authorizing a party to revoke its agreement to electronic delivery without invalidating notices previously sent by e-mail; specifying when such revocation takes effect; authorizing a party to update its e-mail address; specifying when such update takes effect; providing that a notice delivered by e-mail is deemed delivered at the time the e-mail is sent; providing an exception; requiring the sender of the e-mail to maintain certain information; providing construction; amending ss. 83.49, 83.50, 83.51, 83.56,

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and 83.575, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

By Senator Leek

7-01109A-25 20251164__

A bill to be entitled

An act relating to the delivery of notices from landlords to tenants; creating s. 83.505, F.S.; authorizing a landlord to deliver any required notice to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement which specifically agrees to such delivery; requiring a tenant who agrees to such addendum to provide the landlord with his or her valid e-mail address; providing that such delivery is deemed delivered when sent; providing an exception; requiring a landlord to maintain copies of any notice sent by e-mail, with evidence of transmission; providing that this section does not preclude delivery in any other way authorized by law; amending ss. 83.20, 83.49, 83.50, and 83.56, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 83.505, Florida Statutes, is created to read:

83.505 E-mail delivery of notice by landlord.—

(1) A landlord may deliver any notice required by this part to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement specifically agreeing to the delivery of notices by e-mail and has provided a valid e-mail address for such purpose.

(2) A notice delivered by e-mail in accordance with this

section is deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable.

(3) The landlord shall maintain a copy of any notice sent by e-mail, along with evidence of transmission.

(4) This section does not preclude the service of notices by any other means authorized by law.

Section 2. Subsections (2) and (3) of section 83.20, Florida Statutes, are amended to read:

83.20 Causes for removal of tenants.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, by e-mail pursuant to s. 83.505, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter

or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, e-mail pursuant to s. 83.505, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

Section 3. Paragraphs (a) and (d) of subsection (2) and paragraph (a) of subsection (3) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person, by e-mail pursuant to s. 83.505, or by mail to the tenant.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL OR, IF AGREED TO BY ADDENDUM PURSUANT TO S. 83.505, FLORIDA STATUTES, E-MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL OR E-MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address <u>or by e-mail pursuant to s. 83.505</u> of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of .... upon your security deposit, due to ..... It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing <u>or by e-mail</u> to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to ...(landlord's address)....

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

Section 4. Section 83.50, Florida Statutes, is amended to read:

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing or by e-mail pursuant to s. 83.505 to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence, by e-mail if agreed to pursuant to s. 83.505, or, if specified in writing by the tenant, to any other address.

Section 5. Subsection (4) of section 83.56, Florida Statutes, is amended to read:

83.56 Termination of rental agreement.—

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof, by e-mail if applicable pursuant to s. 83.505, or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

Section 6. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Stan McClain, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 12, 2025

I respectfully request that **Senate Bill #1164**, relating to Delivery of Notices from Landlords to Tenants, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Sincerely,

Sen. Tom Leek
Florida Senator, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1622
INTRODUCER:	Senator Trumbull and others
SUBJECT:	Recreational Customary use of Beaches
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Favorable**
2.	Hackett	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 1622 repeals s. 163.035, F.S., which establishes procedures that a governmental entity must follow when attempting to establish a "recreational customary use of property." The customary use doctrine gives the public a right to use a portion of the dry sand area of a privately-owned beach.

The statutory procedures include:

- A public hearing to adopt a formal notice of intent to affected property owners, which notice alleges the existence of a recreational customary use on their properties.
- A judicial proceeding to consider whether the alleged customary use has been ancient, reasonable, without interruption, and free from dispute.

Repeal of the statute means a return to how customary use rights were determined prior to enactment of the statute:

- A governmental entity may declare the existence of a customary use and adopt a local customary use ordinance without following the procedures in s. 163.035, F.S.
- Property owners must file a lawsuit challenging the ordinance and demonstrate in court that the public does not enjoy customary use rights over their privately-owned beaches.
- Courts will apply the common law doctrine of customary use when ascertaining, on a case-by-case basis, whether the public enjoys customary use rights over privately-owned beaches.

The bill takes effect upon becoming a law.

II. Present Situation:

Customary Use

Establishment of the Customary Use Doctrine

In Florida, the public enjoys the right to access shorelines and beaches that are located below what is called the "mean high tide line." The State Constitution provides that "title to the lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people."[1] This is known as the common law public trust doctrine.

However, the beaches of the state also include land beyond what is described in the public trust doctrine. The dry sand beach located *above* the mean high water line may be owned privately, as recognized by statute.[2] In fact, the part of the beach falling landward of the mean high-water line is usually owned by the owner of the adjacent lot. The only publicly-owned part of the beach is that part falling between the mean high and low water lines, which is called the foreshore region.[3]

In the subsection of the State Comprehensive Plan addressing coastal and marine resources, the Legislature seeks to "[e]nsure the public's right to reasonable access to beaches."[4] Like other lands, the privately-owned portion of the beach may be subject to explicit or implied easements, limitations based on traditional rights of use, or common law prohibitions considered nuisances.[5] Courts have also recognized the public's ability to access and use the dry sand areas of privately-owned beaches for recreational purposes.

In 1974, the Florida Supreme Court established what has become known as the customary use doctrine in Florida in *City of Daytona Beach v. Tona-Rama, Inc.*[6] In *Tona-Rama*, the Court concluded that "[i]f the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use as a matter of custom, should not be interfered with by the owner." The Court also recognized, however, that "the owner may make any use of his property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area."[7]

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[1] FLA. CONST. art X, s. 11.
[2] *See* s. 177.28, F.S. (providing, with emphasis added, that the "[m]ean high-water line along the shores of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the state in its sovereign capacity *and upland subject to private ownership*").
[3] Erika Kranz, *Sand for the People: The Continuing Controversy Over Public Access to Florida's Beaches,* 83 FLA. BAR. J. 10, 11 (Jun. 2009), available at https://www.floridabar.org/the-florida-bar-journal/sand-for-the-peoplethe-continuing-controversy-over-public-access-to-floridas-beaches/ (last visited Mar. 26, 2025)
[4] Section 187.201(8)(b)2., F.S.
[5] *Id.*
[6] 294 So. 2d 73 (1974).
[7] *City of Daytona Beach v. Tona-Rama, Inc*., 294 So. 2d 73, 78 (1974).

In 2007, the Fifth District Court of Appeal issued its opinion in *Trepanier v. County of Volusia*,[8] which qualified the customary use doctrine as articulated by the Florida Supreme Court in *Tona-Rama.* In *Trepanier,* the appellate court said:

> While some may find it preferable that proof of these elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears to us that the acquisition of a right to use private property by custom is intensely local and anything but theoretical. "Custom" is inherently a source of law that emanates from long-term, open, obvious, and widely-accepted and widely-exercised practice. It is accordingly impossible precisely to define the geographic area of the beach for which evidence of a specific customary use must be shown, because it will depend on the particular geography and the particular custom at issue.[9]

The appellate court also held that a determination of customary use "requires the courts to ascertain *in each case* the degree of customary and ancient use the beach has been subject to …."[10]

Regulation of Beaches by Local Governments

The Florida Attorney General issued an opinion in 2002 addressing the regulation of the dry sand portion of beaches. The City of Destin adopted a beach management ordinance to provide for the regulation of public use and conduct on the beach. The Sheriff of Okaloosa County and the city mayor inquired about the regulation.[11]

The Attorney General issued three findings in its opinion:

- The city may regulate the beach in a reasonable manner within its corporate limits to protect the public health, safety, and welfare. This regulation must have a rational relation to, and be reasonably designed to accomplish, a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. Such regulation may be accomplished regardless of the ownership of this area, with the exception of state ownership, and without regard to whether the public has been expressly or impliedly allowed to use that area of the beach by a private property owner who may hold title to the property.
- The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*
- Private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the city may use local law enforcement agencies for purposes of reporting incidents of trespass as they occur.[12]

[8] 965 So. 2d 276 (Fla. 5th DCA 2007).
[9] *Id*. at 289.
[10] *Id*. at 288 (quoting, with emphasis added, *Reynolds v. County of Volusia*, 659 So. 2d 1186, 1190-91 (Fla. 5th DCA 1995)).
[11] Op. Att'y Gen. Fla. 2002-38 (2002).
[12] *Id*.

In 2016, Walton County enacted an ordinance (the "Customary Use Ordinance") which declared that "[t]he public's long-standing customary use of the dry sand areas of all of the beaches in the County for recreational purposes is hereby protected."[13]

Except for the buffer zone described below, the ordinance prohibited any individual, group, or entity from "imped[ing] or interfer[ing] with the right of the public at large, including the residents and visitors of the County, [from] utiliz[ing] the dry sand areas of the beach that are owned by private entities" for certain specified uses, including:

- Traversing the beach.
- Sitting on the sand, in a beach chair, or on a beach towel or blanket.
- Using a beach umbrella that is 7 feet or less in diameter.
- Sunbathing.
- Picknicking.
- Fishing.
- Swimming or surfing off the beach.
- Staging surfing or fishing equipment.
- Building sand creations.[14]

However, the ordinance prohibited the public at large, including the residents and visitors of the county, from using a 15-foot buffer zone located "seaward from the toe of the dune or from any permanent habitable structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward, except as necessary to utilize an existing or future public beach access point for ingress and egress to the beach."[15] It also prohibited the use of tobacco, possession of animals, or erection or use of tents by members of the public on the privately-owned dry sand areas of the beach.[16]

The county's Customary Use Ordinance was not popular with beachfront homeowners because it interfered with their "ability to keep their private beachfront property just that, private."[17] Lionel and Tammy Alford, owners of beachfront property in the county, sued the county in federal district court seeking, among other things, a declaration that the ordinance was "*void ab initio* on grounds that customary use is a common law doctrine reserved to the courts for determination on a case-by-case basis, and therefore, the County exceeded its authority and acted *ultra vires* by legislating customary use on a county-wide basis."[18]

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[13] Walton County, Fla., Ord. No. 2017-10, ss. 1, 4 (adopted Mar. 28, 2017) (amending earlier Ord. No. 2016-23), available at https://waltonclerk.com/vertical/sites/%7BA6BED226-E1BB-4A16-9632-BB8E6515F4E0%7D/uploads/2017-10.pdf; *see also* Walton County, Fla., Ord. No. 2016-23, s. 1 (adopted Oct. 25, 2016) (the original customary use ordinance), available at https://waltonclerk.com/vertical/sites/%7BA6BED226-E1BB-4A16-9632-BB8E6515F4E0%7D/uploads/2016-23.pdf.

[14] *Id.* The ordinance defined the "dry sand area of the beach" as "the zone of unconsolidated material that extends landward from the mean high-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, whichever is more seaward." Ord. No. 2017-10, s. 2, *supra* note 13.

[15] Ord. No. 2017-10, s. 3, *supra* note 13.

[16] Ord. No. 2017-10, s. 5, *supra* note 13.

[17] Amelia Ulmer, *Ancient and Reasonable: The Customary Use Doctrine and Its Applicability to Private Beaches in Florida*, 36 J. LAND USE & ENVTL. L. 145, 159 (2020) [hereinafter "*Ancient and Reasonable*"].

[18] *Alford, et al., v. Walton County*, 2017 WL 8785115, at **1-2 (N.D. Fla. 2017).

The district court sided with the county and upheld the Customary Use Ordinance. Based on its analysis of *Tona-Rama* and *Trepanier*, the district court concluded that the county did not act outside its authority in adopting the ordinance.[19] The district court did note, however, that "property owners have a right under Florida law to *de novo* as-applied judicial review and a determination of the existence of customary use rights."[20] The decision was appealed to the U.S. Eleventh Circuit Court of Appeals, which directed, without explanation, that the district court vacate the judgment, apparently in response to arguments that the legislative invalidation of the ordinance by HB 631 (2018 Reg. Session) mooted the claim.[21]

HB 631 (2018 Reg. Session)

While the Alfords' case was pending in the U.S. Eleventh Circuit Court of Appeals, the Legislature enacted a new law, HB 631, which it codified as s. 163.035, F.S., entitled the "establishment of recreational customary use." The statute establishes a process by which a governmental entity may seek a judicial determination of the recreational customary use of private beach property.[22]

Under the statute, a governmental entity[23] may not adopt or keep in effect an ordinance or rule that is based upon the customary use of any portion of a beach above the mean high water line, unless the ordinance or rule is based upon a judicial declaration affirming recreational customary use of the beach.[24] The governmental entity may seek a judicial determination of a recreational customary use of private beach property by following the process outlined in the statute.[25]

First, the governmental entity must adopt, at a public hearing, a formal notice of intent to affirm the existence of a recreational customary use on private property. The notice must specifically identify:

- The parcels of property, or the specific portions of the property, for which the customary use affirmation is sought.
- The detailed, specific, and individual use or uses of the parcels to which the customary use affirmation is sought.
- Each source of evidence the governmental entity will rely upon to prove that the recreational customary use has been ancient, reasonable, without interruption, and free from dispute.[26]

The governmental entity must provide notice of the public hearing to the owner of each parcel of property at the address recorded in the county property appraiser's records. The notice must be:

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[19] *Id*. at *16.
[20] *Id*.
[21] *Alford v. Walton County*, 0:17-prici-15741 (11th Cir. June 27, 2018) (reflecting on the docket that the Court granted appellants' motion to vacate the district court's order and judgment concerning customary use ordinance claim); Alyson Flournoy et al., *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom and Controversy,* 25 OCEAN & COASTAL L.J. 1, 33 fn. 110 (2020).
[22] Chapter 2018-94, s. 10, Laws of Fla. (enacting CS/HB 631 (2018 Reg. Session)).
[23] The term "governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. Section 163.035(1), F.S.
[24] Section 163.035(2), F.S.
[25] Section 163.035(3), F.S.
[26] Section 163.035(3)(a), F.S.

- Provided at least 30 days before the public meeting by certified mail with return receipt requested.
- Published in a newspaper of general circulation in the area where the parcels of property are located.
- Posted on the governmental entity's website.[27]

Second, within 60 days after adopting the notice of intent, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county where the subject property is located. This cause of action is similar to a declaratory judgment.[28] The governmental entity must provide notice of filing the complaint to the owner of each parcel as required above for the notice of intent. The notice must allow the owner to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must also provide verification that the notice has been served to the property owners so that the court may establish a schedule for the proceedings.[29]

Proceedings under the statute are conducted *de novo,* which means anew. The court must determine whether the evidence presented by the governmental entity demonstrates that the recreational customary use or uses identified in the notice of intent have been ancient, reasonable, without interruption, and free from dispute. No presumption exists regarding the existence of a recreational customary use of the property in question. The governmental entity bears the burden of proof to demonstrate that the recreational customary use exists. A parcel owner who is subject to the complaint may intervene in the proceeding as a party defendant in the proceeding.[30]

These customary use provisions do not apply to a governmental entity having an ordinance or rule that was adopted and in effect on or before January 1, 2016. Additionally, the provisions do not deprive a governmental entity from raising customary use as an affirmative defense in any proceeding that challenges an ordinance or rule that was adopted before July 1, 2018.[31]

Executive Order 18-202

Governor Rick Scott signed Executive Order 18-202 (Jul. 12, 2018) only about two weeks after HB 631 took effect.[32] In his executive order, Governor Scott directed state agencies to not adopt any rule restricting public access to any state beach having an established recreational customary use.[33] He also directed the Secretary of the Department of Environmental Protection and the Director of the Florida State Parks System to engage in "appropriate efforts" to ensure access to Florida's public beaches.[34]

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[27] *Id.*
[28] A declaratory judgment is a binding adjudication in which a court establishes the rights of the parties without requiring enforcement of its decision. It is generally used to resolve legal uncertainties for the parties. BLACK'S LAW DICTIONARY (12th ed. 2024).
[29] Section 163.035(3)(b)1., F.S.
[30] Section 163.035(3)(b)2., F.S.
[31] Section 163.035(4), F.S.
[32] Fla. Exec. Order No. 18-202 (Jul. 12, 2018), available at https://clarkpartington.com/wp-content/uploads/2024/04/EO-18-202.pdf.
[33] Fla. Exec. Order No. 18-202, *supra* note 32, s. 1.
[34] Fla. Exec. Order No. 18-202, *supra* note 32, s. 2.

To assist with implementing the executive order, Governor Scott also directed the Secretary and Director to:

- Establish an online reporting tool for members of the public to report any violations of their right to public beach access; identify and allocate staff to coordinate with the public in reviewing complaints; and refer any such complaints to appropriate local authorities.
- Submit a report to the Legislature, on or before December 31, 2018, regarding comments received through the public hotline.
- Serve as a liaison between local government entities and members of the public regarding the appropriate implementation of HB 631 by county and municipal governments.[35]

The Governor also urged all governmental entities not headed by an official serving at the pleasure of the Governor, including county and municipal governments, to refrain from adopting any ordinance or rule that would restrict or eliminate access to public beaches.[36]

Following the executive order, not much changed for local governments. They still had to follow the procedures in s. 163.035, F.S., to enact new customary use ordinances. And now they were "urged" to not further restrict beach access.[37]

Walton County Lawsuit

In 2018, consistent with the procedures outlined in s. 163.035, F.S., Walton County filed a complaint in circuit court seeking a declaration affirming the existence of customary uses on 1,194 private properties in the county.[38] Specifically, the complaint sought a judgment declaring that:

- The uses identified in the county's 2017 Customary Use Ordinance were recreational customary uses on each of the specific parcels listed in the complaint.
- The recreational customary uses identified in the formal notice of intent were ancient, reasonable, without interruption, and free from dispute.[39]

Litigating the case took almost 5 years. It was set to proceed with a 7-week bench trial beginning on May 22, 2023, but never did. Ultimately, the property owners who were represented by counsel and objected to the establishment of customary uses on their privately-owned beaches either:

- Obtained a dismissal with prejudice and a finding that customary uses do not exist on their beaches; or
- Negotiated a settlement agreement allowing the public a 20-foot transitory area for walking and sitting, and a finding that customary uses do not exist on their beaches.[40]

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[35] *Id.*
[36] Fla. Exec. Order No. 18-202, *supra* note 32, s. 3.
[37] *Ancient and Reasonable, supra* note 17, at 161.
[38] *In re: Affirming Existence of Recreational Customary Use on 1,194 Private Properties Located in Walton County, Florida,* Case No. 2018-CA-000547 (Fla. 1st Cir. Ct. Dec. 11, 2018) (Complaint for Declaration of Recreational Customary Use) available at http://publicfiles.surfrider.org/Legal/Complaint_for_Declaration_of_Recreational_Customary_Use_12-11-18.pdf [hereinafter "Section 163.035, F.S., Complaint"]; *see also* s. 163.035(3)(b)1., F.S. (requiring governmental entities to file a "Complaint for Declaration of Recreational Customary Use").
[39] Section 163.035, F.S., Complaint, *supra* note 38, at 44-45.
[40] *In re: Affirming Existence of Recreational Customary Use on 1,194 Private Properties Located in Walton County, Florida,* Case No. 2018-CA-000547 (Fla. 1st Cir. Ct. Feb. 14, 2024) (Final Summary Judgment on Remaining Parcels attaching

Out of the initial 1,194 properties at issue, the court only had to decide whether the public had customary use rights over 95 unrepresented properties that never objected to the litigation. Because there had been no opposition to the evidence presented by the county, the court effectively had no choice but to conclude that the public had established customary use rights over the 95 properties.[41]

III. Effect of Proposed Changes:

The bill repeals s. 163.035, F.S., which establishes procedures that a governmental entity must follow when attempting to establish a "recreational customary use of property."

As detailed above, the statutory procedures include:

- A public hearing to adopt a formal notice of intent to affected property owners, which notice alleges the existence of a recreational customary use on their properties.
- A judicial proceeding to consider whether the alleged customary use has been ancient, reasonable, without interruption, and free from dispute.

Repeal of the statute means a return to how customary use rights were determined prior to enactment of the statute:

- A governmental entity may declare the existence of a customary use and adopt a local customary use ordinance without following the procedures in s. 163.035, F.S.
- Property owners must file a lawsuit challenging the ordinance and demonstrate in court that the public does not enjoy customary use rights over their privately-owned beaches.
- Courts will apply the common law doctrine of customary use when ascertaining, on a case-by-case basis, whether the public enjoys customary use rights over privately-owned beaches.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

Settlement Agreement), available at https://clarkpartington.com/wp-content/uploads/2024/04/Final-Judgment-on-Remaining-Parcels-A5288243xA3759.pdf; *see also* Will Dunaway, Clark Partington, Attorneys at Law, *Customary Use Litigation in Walton County, Part II* (Dec. 5, 2023), https://clarkpartington.com/2023/12/05/customary-use-litigation-in-walton-county-part-ii/ (last visited Mar. 28, 2025)

[41] *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The repeal of s. 163.035, F.S., means the upland owners of privately-owned beaches will either have to acquiesce to governmental entities' customary use ordinances or incur the legal costs associated with opposing customary uses on their particular beaches. Accordingly, the bill may have a negative fiscal impact on the upland owners of privately-owned beaches.

C. Government Sector Impact:

Under the bill, governmental entities will no longer have to follow the procedures of s. 163.035, F.S., to establish customary use rights over privately-owned beaches, which could save them the legal costs associated with litigating the issue in court. Accordingly, the bill may have a positive fiscal impact on governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 163.035 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 Trumbull

2-01664A-25 20251622__

A bill to be entitled

An act relating to recreational customary use of beaches; repealing s. 163.035, F.S., relating to the establishment of recreational customary use of beaches; providing an effective date.

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

Section 1. Section 163.035, Florida Statutes, is repealed.

Section 2. This act shall take effect upon becoming a law.

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 1674
INTRODUCER:	Senator Fine and others
SUBJECT:	Unrated Bonds
DATE:	March 26, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shuler	Fleming	CA	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 1674 prohibits a local government's investment policy from requiring a minimum bond rating for investing in any type of bond where the list of authorized investments in statute explicitly allows for the purchase of unrated bonds. The list of authorized investments in current law allows local governments to invest in unrated bonds issued by the Israeli government.

The bill takes effect on July 1, 2025.

II. Present Situation:

Local Government Investment Policies

Known as the "Investment of Local Government Surplus Funds Act,"[1] part IV of chapter 218, F.S., (ss. 218.40-218.415, F.S.) provides the framework by which local governments may maximize "net interest earnings on invested surplus funds of local units of government, based on the principles of investor protection, mandated transparency, and proper governance, with the goal of reducing the need for imposing additional taxes."[2]

Each unit of local government[3] in the state may invest any surplus funds either according to a written investment policy adopted by the governing body or principal officer of the local

[1] Section 218.40, F.S.
[2] Section 218.401, F.S.
[3] A "unit of local government" is defined under the act as any governmental entity within the state that is not part of state government and includes, but is not limited to, the following and the officers of: any county, municipality, school district, special district, clerk of the circuit court, sheriff, property appraiser, tax collector, supervisor of elections, authority, board, public corporations, or any other political subdivision of the state. S. 218.403(11), F.S.

government, or they may choose to invest according to alternative guidelines that authorize a more limited range of investment types.[4]

If a local government has not adopted a written investment policy, its ability to invest surplus funds in their control or possession is limited to:

- The Local Government Surplus Funds Trust Fund or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act of 1969.
- Money market funds registered with the Securities and Exchange Commission with the highest credit quality rating from a nationally recognized rating agency.
- Interest-bearing time deposits, such as certificates of deposit, or savings accounts in qualified public depositories.
- Direct obligations of the United States Treasury.[5]

If the unit of local government has chosen to invest pursuant to a written investment policy, the investment policy applies to funds under the control of the unit of local government in excess of those required to meet current expenses, but does not apply to any pension funds of the local government, including any firefighter or municipal police pensions, or to any funds related to debt issuance where there are other policies or indentures governing such funds.[6]

The local government's written investment policy must be structured to place the highest priority on the safety of principal and liquidity of funds, with maximizing investment returns as a secondary consideration.[7] The investment portfolio must be structured so that the local government has sufficient liquidity to pay obligations as they come due.[8] The policy must describe investment objectives, specify performance measures appropriate for the nature and size of the funds held by the local government, and describe the level of prudence and ethical standards followed by the local government in investing.[9] The policy must also include guidelines for investments, limits on security issues, issuers, and maturities the funds will be deposited in, and provide for appropriate diversification.[10]

A local government's written investment policy must include a list of investments authorized by the governing body of the unit of local government selected from a list of investments provided in statute.[11] Any investments not listed in the investment policy are expressly prohibited.[12] Section 218.415(16), F.S. lists the following authorized investments:

- The Local Government Surplus Funds Trust Fund or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act of 1969.[13]

[4] Section 218.415, F.S.
[5] Section 218.415(17), F.S.
[6] Section 218.415(1), F.S.
[7] Section 218.415, F.S.
[8] Section 218.415(6), F.S.
[9] Sections 218.415(2)-(4), F.S.
[10] Sections 218.415(7)-(8), F.S.
[11] Section 218.415(5), F.S.
[12] Section 218.415(5), F.S.
[13] The Local Government Surplus Funds Trust Fund, also known as Florida PRIME, is administered by the State Board of Administration and currently holds a balance of over $34 billion dollars on behalf of 819 participating local governments. State Board of Administration, *Florida PRIME Monthly Summary Report,* (Jan. 31, 2025), *available at* https://prime.sbafla.com/media/013lslpj/monthly_summary_report_01_31_25.pdf (last visited Mar. 26, 2025). Additionally,

- Money market funds registered with the Securities and Exchange Commission with the highest credit quality rating from a nationally recognized rating agency.
- Interest-bearing time deposits, such as certificates of deposit, or savings accounts in qualified public depositories.
- Direct obligations of the United States Treasury.
- Federal agencies and instrumentalities.
- Rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel.
- Securities or other interests in any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940 that is limited to investing in obligations of the United States Government and to repurchase agreements fully collateralized by such United States Government obligations.
- Other investments authorized by law or by ordinance for a county or a municipality.
- Other investments authorized by law or by resolution for a school district or a special district.

If the local government's investment policy authorizes investments in derivative products or in reverse repurchase agreements or other forms of leverage, the policy must require the officials responsible for making investment decisions to have sufficient understanding and expertise in the use of such products.[14] Reverse repurchase agreements or other forms of leverage may only be used where the proceeds are intended to provide liquidity to the local government.[15]

Each local government's investment policy must provide for a system of internal controls and operational procedures to prevent the loss of funds by fraud, employee error, misrepresentation by third parties, or imprudent actions by employees.[16] The system of internal controls must provide for the review of such controls by independent auditors as part of any financial audit required of the local government.[17] The policy must also provide for reporting on at least an annual basis that includes the local government's investment portfolio, the book value of the assets in the portfolio, any income earned by the portfolio, and the market value as of the date of the report.[18]

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there are currently two intragovernmental investment pools operating in the state, the Florida Local Government Investment Trust, jointly created by the Florida Association of Counties and the Florida Court Clerks & Comptrollers, and the Florida Municipal Investment Trust. *See* Florida Trust, *About the Florida Trust*, https://www.floridatrustonline.com/about/ (last visited Mar. 26, 2025) and Florida League of Cities, *Florida Municipal Investment Trust (FMIVT)*, https://www.floridaleagueofcities.com/services/investments-(fmivt) (last visited Mar. 26, 2025).

[14] A "derivative" is defined by the act as any financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or index or asset values. S. 218.415(5), F.S. A "reverse repurchase agreement" is a transaction in which an investor owns a security that a bank or other party purchases from the investor such to an agreement to sell the security back to the investor on a specified date at an agreed-upon interest rate. Government Finance Officers Association, *Ensuring the Safety of Reverse Repurchase Agreements*, https://www.gfoa.org/materials/ensuring-the-safety-of-reverse-repurchase-agreements (last visited Mar. 26, 2025).

[15] Section 218.415(5), F.S.

[16] Section 218.415(13), F.S.

[17] *Id.* Certified public accountants conduction annual financial audits of units of local government pursuant to s. 218.39, F.S. must report as part of the audit whether the local government is complying with the requirements for local government investment policies. S. 218.415(22), F.S.

[18] Section 218.415(15), F.S.

Bond Ratings

Bond ratings are measures developed by credit rating agencies to inform investors of the creditworthiness of a bond issuer.[19] Ratings agencies conduct research into the financial health of bond issuers and assign ratings based on their findings.[20] Ratings are reported using a hierarchical system that allows investors to compare the risks associated with the bonds of different issuers.[21] While various gradations exist, bonds are often thought of as being either "investment-grade" (bonds with a rating of BBB- (on the Standard & Poor's and Fitch scale) or Baa3 (on Moody's) or better) or "speculative" (sometimes called "high-yield" or "junk" bonds).[22] An unrated bond is a bond that has not received a rating from a rating agency.[23] While perceived by some as representing greater investment risk, bonds may be unrated for reasons unrelated to creditworthiness.[24]

Israeli bonds

Section 215.44, F.S., directs the State Board of Administration to invest funds in the System Trust Fund established in the State Treasury for the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may be entitled under the Florida Retirement System. Section 215.47(2), F.S., provides that not more than 25 percent of any fund available for investment can be invested in specified areas, and that a portion of those funds available for investment can be invested in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel. The authority for local governments with written investment policies to invest in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel was put into law in 2007.[25]

Israeli bonds have been a popular investment choice for some counties. In March of 2024, the Palm Beach County Board of County Commissioners voted unanimously to amend its investment policy to increase the cap for the amount of the portfolio that could be invested in Israeli bonds from 10 percent to 15 percent, allowing the county to invest approximately $700 million in total in Israeli bonds.[26] The Palm Beach County investment policy provides that the Clerk may purchase investments in bonds, notes, or instruments backed by the full faith and credit of the government of Israel if Standard & Poor's and Moody's have rated Israel's foreign debt at the time of purchase as "A" or higher.[27] Broward County announced in October of 2023,

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[19] Fidelity, *Bond Ratings*, https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/bond-ratings (last visited Mar. 26, 2025).
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Intrepid Capital, *Demystifying Non-Rated Bonds*, https://blog.intrepidcapitalfunds.com/advisor-insights/demystifying-non-rated-bonds (last visited Mar. 26. 2025).
[24] *Id*.
[25] Chapter 2007-28, Laws of Fla.
[26] Clerk of the Circuit Court & Comptroller of Palm Beach County, *World's Largest Investor in Israel Bonds*, (Mar. 26, 2024) https://www.mypalmbeachclerk.com/Home/Components/News/News/712/16 (last visited Mar. 27, 2025).
[27] Palm Beach County Board of County Commissioners, Resolution No. R-2024-0334, s. VI.A.11., *available at* https://www.mypalmbeachclerk.com/home/showpublisheddocument/286/638530276351930000 (last visited Mar. 27, 2025).

that it holds $5 million in Israeli bonds,[28] and Miami-Dade County announced its total investment in Israeli bonds at that time to be $76 million.[29] While the investment policy of Broward County includes minimum bond ratings for some types of investments, it does not specify a minimum bond rating for Israeli bonds.[30] Miami-Dade's investment policy requires that bonds backed by the Israeli government have an "A" rating or above or equivalent rating by at least two accredited ratings agencies.[31]

In September of 2024, Moody's Ratings downgraded bonds backed by the Israeli government from A2 to Baa1.[32] Moody's stated that "The key driver for the downgrade is our view that geopolitical risk has intensified significantly further, to very high levels, with material negative consequences for Israel's creditworthiness in both the near and longer term."[33]

III. Effect of Proposed Changes:

The bill amends s. 218.415, F.S., to prohibit a local government's investment policy from requiring a minimum bond rating for investing in any type of bond where the list of authorized investment in statute allows for the purchase of unrated bonds.

The list of authorized investments in current law allows local governments to invest in unrated bonds issued by the Israeli government.

The effective date of the bill is July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[28] Broward County Office of Public Communications, Israeli Bonds Part of Broward County's Investment Portfolio (Oct. 13, 2023), https://webapps6.broward.org/newsrelease/View.aspx?intMessageId=14488 (last visited Mar. 27, 2025).
[29] Miami-Dade County Office of the Mayor, Mayor Daniella Levine Cava announces Miami-Dade County will boost investment in Israel, (Oct. 17, 2023) https://www.miamidade.gov/global/release.page?Mduid_release=rel1697579815448444 (last visited Mar. 27, 2025).
[30] Broward County Board of County Commissioners, Resolution No. 2007-314 s. 22.84.o., *available at* https://library.municode.com/fl/broward_county/codes/administrative_code?nodeId=CH22OTOPPOFIADSE_PTXIIIINPOBRCO (last visited Mar. 27, 2025).
[31] Miami-Dade County, *Investment Policy*, 6 (2020) *available at* https://www.miamidade.gov/finance/library/policy.pdf (last visited Mar. 27, 2025).
[32] Moody's, *Moody's Ratings Downgrades Israel's Ratings to Baa1, Maintains Negative Outlook*, (Sept. 27, 2024), https://ratings.moodys.com/ratings-news/429502 (last visited Mar. 27, 2025).
[33] *Id.*

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:

Because s. 218.415, F.S., authorizes, but does not require, local governments to invest in any particular investment products, this bill will not have a direct fiscal effect on government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 218.415 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.

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LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Community Affairs (Fine) recommended the following:

Senate Amendment

Delete lines 32 - 34
and insert:
governing body of the unit of local government may not require a minimum bond rating for investments authorized pursuant to paragraph (16)(f). Investments not listed in the

By Senator Fine

19-01508B-25 20251674__

A bill to be entitled

An act relating to unrated bonds; amending s. 218.415, F.S.; prohibiting local governments from requiring minimum bond ratings in certain circumstances; providing an effective date.

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

Section 1. Subsection (5) of section 218.415, Florida Statutes, is amended to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(5) LISTING OF AUTHORIZED INVESTMENTS.—The investment policy shall list investments authorized by the governing body

of the unit of local government, subject to the provisions of subsection (16). The investment policy authorized by the governing body of the unit of local government shall not require a minimum bond rating if the provisions of subsection (16) authorize unrated bonds. Investments not listed in the investment policy are prohibited. If the policy authorizes investments in derivative products, the policy must require that the unit of local government's officials responsible for making investment decisions or chief financial officer have developed sufficient understanding of the derivative products and have the expertise to manage them. For purposes of this subsection, a "derivative" is defined as a financial instrument the value of which depends on, or is derived from, the value of one or more underlying assets or index or asset values. If the policy authorizes investments in reverse repurchase agreements or other forms of leverage, the policy must limit the investments to transactions in which the proceeds are intended to provide liquidity and for which the unit of local government has sufficient resources and expertise.

Section 2. This act shall take effect July 1, 2025.

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March 10, 2025

The Honorable Stan McClain
Chairman, Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman McClain,

The following bill has been referred to your Judiciary Committee:

SB 1674: Unrated Bonds.

I respectfully request that this bill be placed on the committee's agenda for the next committee meeting.

I would greatly appreciate your consideration on this matter.

cc:
Staff Director Elizabeth Fleming
Administrative Assistant Tatiana Warden

Sincerely,

Randy Fine
State Senator, District 19

Governmental Oversight and Accountability, Chair
Community Affairs, Vice Chair
Joint Select Committee on Collective Bargaining, Alternating Chair
Appropriations -- Regulated Industries
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Pre-K - 12 Education -- Education Postsecondary
Brevard County Delegation

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 1714
INTRODUCER:	Senators Burton and Arrington
SUBJECT:	Local Housing Assistance Plans
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Pre-meeting**
2.			ATD	
3.			RC	

I. Summary:

SB 1714 provides that a county's or municipality's local housing assistance plan under the State Housing Initiatives Partnership Program must include a strategy for providing program funds to mobile home owners, including lot rental assistance. Lot rental assistance is considered homeownership activity for the purposes of allocating program funds, while rehabilitation and emergency repairs for mobile homes is considered construction, rehabilitation, or emergency repair of affordable, eligible housing.

The bill takes effect July 1, 2025.

II. Present Situation:

Affordable Housing

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.[1] Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income levels, published annually by the U.S. Department of Housing and Urban Development for every county and metropolitan area.

The two primary state housing assistance programs are the State Housing Initiatives Partnership (SHIP)[2] and the State Apartment Incentive Loan[3] programs. The SHIP program provides funds to eligible local governments, allocated using a population-based formula, to address local housing needs as identified by the local government. The SAIL program provides low interest

[1] Section 420.9071(2), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.
[2] Sections 420.907-9079, F.S.
[3] Section 420.5087, F.S.

loans on a competitive basis as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.[4]

State Housing Initiatives Partnership (SHIP) Program

The SHIP Program was created in 1992[5] to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The SHIP program provides funds to all 67 counties and 52 Community Development Block Grant[6] entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.[7] The program was designed to serve very-low, low, and moderate-income families and is administered by the Florida Housing Finance Corporation (FHFC).

A dedicated funding source for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. The SHIP Program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program under an established formula.[8] A county or eligible municipality seeking funds from the SHIP Program must adopt an ordinance that:

- Creates a local housing assistance trust fund;
- Adopts a local housing assistance plan to be implemented through a local housing partnership;
- Designates responsibility for administering the local housing assistance plan; and
- Creates an affordable housing advisory committee.[9]

Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.[10] Local governments submit their LHAPs to the FHFC for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. The FHFC must approve an LHAP before a local government may receive the SHIP funding.

A local government may not expend money distributed to it to provide ongoing rent subsidies, except for:[11]

- Security and utility deposit assistance;
- Eviction prevention not to exceed six months' rent; or

[4] Section 420.5087, F.S.
[5] Chapter 92-317, Laws of Fla.
[6] The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.
[7] *See* ss. 420.907-420.9089, F.S.
[8] Section 420.9073, F.S.
[9] Section 420.9072, F.S.
[10] Section 420.9075, F.S. Section 420.9075(3), F.S. outlines a list of strategies LHAPs are encouraged to employ, such as helping those affected by mobile home park closures, encouraging innovative housing design to reduce long-term housing costs, preserving assisted housing, and reducing homelessness.
[11] Section 420.072(7), F.S.

- A rent subsidy program for very-low-income households with at least one adult who is a person with special needs[12] or is homeless,[13] not to exceed 12 months' rental assistance.

Certain statutory requirements further restrict a local government's use of funds made available under the SHIP program (excluding amounts set aside for administrative costs):[14]

- At least 75 percent of SHIP funds *must* be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;[15] and
- Up to 25 percent of SHIP funds *may* be reserved for allowed rental services.[16]

Within those distributions by local governments, additional requirements must be met:

- At least 65 percent of SHIP funds must be reserved for home ownership for eligible persons;[17]
- At least 20 percent of SHIP funds must serve persons with special needs;
- Up to 20 percent of SHIP funds may be used for manufactured housing; and
- At least 30 percent of SHIP funds must be used for awards to very-low-income persons or eligible sponsors serving very-low-income persons, and another 30 percent must be used for awards for low-income-persons or eligible sponsors serving low-income persons.

III. Effect of Proposed Changes:

The bill amends s. 420.9075, F.S., to provide that a local housing assistance plan must include a strategy for providing program funds to mobile home owners,[18] including lot rental assistance. Lot rental assistance is considered homeownership activity for the purposes of allocating program funds, while rehabilitation and emergency repairs for mobile homes is considered construction, rehabilitation, or emergency repair of affordable, eligible housing.

The bill takes effect July 1, 2025.

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[12] As defined in s. 420.0004, F.S., "Person with special needs" means an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5), F.S.; a survivor of domestic violence as defined in s. 741.28, F.S.; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

[13] As defined in s. 420.621, F.S., "homeless" means an individual or family who lacks or will imminently lose access to a fixed, regular, and adequate nighttime residence.

[14] Section 420.9075(5), F.S.

[15] As defined in s. 420.9071(9), "Eligible housing" means any real and personal property located within the county or the eligible municipality which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units, or manufactured housing constructed after June 1994, for home ownership or rental for eligible persons as designated by each county or eligible municipality participating in the State Housing Initiatives Partnership Program.

[16] *See* s. 420.9072(7)(b), F.S.

[17] As defined in s. 420.9071(11), F.S., "Eligible person" or "eligible household" means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income based upon the annual gross income of the household.

[18] Section 723.003(11), F.S., defines "mobile home owner" as a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use. Section 720.003(12), F.S., defines "mobile home park" as a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not affect the amount of funds to be distributed to counties and municipalities under the SHIP program but alters how those funds may be expended throughout a community.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 420.9075 and 420.9071 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.

136390

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Burton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 120
and insert:

Section 1. Paragraph (b) of subsection (7) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing

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partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(7)

(b) A county or an eligible municipality may not expend its portion of the local housing distribution to provide ongoing rent subsidies, except for:

1. Security and utility deposit assistance.

2. Eviction prevention not to exceed 6 months' rent.

3. Lot rental assistance for mobile home owners as defined in s. 723.003, not to exceed 6 months' rent.

4. A rent subsidy program for very-low-income households with at least one adult who is a person with special needs as defined in s. 420.0004 or homeless as defined in s. 420.621. The period of rental assistance may not exceed 12 months for any eligible household.

Section 2. Paragraphs (d) through (g) of subsection (3) of section 420.9075, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, a new paragraph (d) and paragraph (i) are added to subsection (3) of that section, and paragraph (c) of subsection (3) and paragraphs (a), (c), (e), and (n) of subsection (5) are amended, to read:

420.9075 Local housing assistance plans; partnerships.—

(3)

(c) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan that addresses the needs of persons who are deprived of affordable housing due to the ~~closure of a mobile~~

~~home park or the~~ conversion of affordable rental units to condominiums.

(d) Each county and each eligible municipality shall include in its local housing assistance plan a strategy that addresses the needs of persons who are deprived of affordable housing due to the closure of a mobile home park.

(i) Each county and each eligible municipality shall include in its local housing assistance plan a strategy for providing program funds to mobile home owners, as defined in s. 723.003, which must include lot rental assistance.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons. For purposes of this paragraph, lot rental assistance for eligible mobile home owners as defined in s. 723.003 is an approved home ownership activity.

(c) At least 75 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing. Funds may be provided to mobile home owners as defined in s. 723.003 for rehabilitation and emergency repairs under this paragraph.

~~(e) Not more than 20 percent of the funds made available in each county and eligible municipality from the local housing distribution may be used for manufactured housing.~~

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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 3
and insert:
amending s. 420.9072, F.S.; authorizing counties and eligible municipalities to expend certain funds on lot rental assistance for mobile home owners for a specified time period; amending s. 420.9075, F.S.; requiring each county and

By Senator Burton

12-00817C-25 20251714__

A bill to be entitled

An act relating to local housing assistance plans; amending s. 420.9075, F.S.; requiring each county and eligible municipality to include in its local housing assistance plan a certain strategy; providing that lot rental assistance for eligible mobile home owners is an approved home ownership activity for certain purposes; authorizing counties and eligible municipalities to provide certain funds to mobile home owners for rehabilitation and emergency repairs; deleting a provision limiting to a specified percentage the amount of certain funds that may be used for manufactured housing; amending s. 420.9071, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (5) of section 420.9075, Florida Statutes, is amended, and paragraph (h) is added to subsection (3) of that section, to read:

420.9075 Local housing assistance plans; partnerships.—

(3)

(h) Each county and each eligible municipality shall include in its local housing assistance plan a strategy for providing program funds to mobile home owners as defined in s. 723.003, which must include lot rental assistance.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing

eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons. For purposes of this paragraph, lot rental assistance for eligible mobile home owners as defined in s. 723.003 is an approved home ownership activity.

(b) Up to 25 percent of the funds made available in each county and eligible municipality from the local housing distribution may be reserved for rental housing for eligible persons or for the purposes enumerated in s. 420.9072(7)(b).

(c) At least 75 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing. Funds may be provided to mobile home owners as defined in s. 723.003 for rehabilitation and emergency repairs under this paragraph.

(d) Each local government must use a minimum of 20 percent of its local housing distribution to serve persons with special needs as defined in s. 420.0004. A local government must certify that it will meet this requirement through existing approved strategies in the local housing assistance plan or submit a new local housing assistance plan strategy for this purpose to the corporation for approval to ensure that the plan meets this requirement. The first priority of these special needs funds must be to serve persons with developmental disabilities as defined in s. 393.063, with an emphasis on home modifications, including technological enhancements and devices, which will allow homeowners to remain independent in their own homes and

maintain their homeownership.

(e) ~~Not more than 20 percent of the funds made available in each county and eligible municipality from the local housing distribution may be used for manufactured housing.~~

~~(f)~~ The sales price or value of new or existing eligible housing may not exceed 90 percent of the average area purchase price in the statistical area in which the eligible housing is located. Such average area purchase price may be that calculated for any 12-month period beginning not earlier than the fourth calendar year prior to the year in which the award occurs or as otherwise established by the United States Department of the Treasury.

(f)1.~~(g)1.~~ All units constructed, rehabilitated, or otherwise assisted with the funds provided from the local housing assistance trust fund must be occupied by very-low-income persons, low-income persons, and moderate-income persons except as otherwise provided in this section.

2.a. At least 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to very-low-income persons or eligible sponsors who will serve very-low-income persons, and at least an additional 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to low-income persons or eligible sponsors who will serve low-income persons.

b. This subparagraph does not apply to a county or an eligible municipality that includes or has included within the previous 5 years an area of critical state concern designated by the Legislature for which the Legislature has declared its intent to provide affordable housing. This sub-subparagraph

expires on July 1, 2029, and applies retroactively.

(g) ~~(h)~~ Loans shall be provided for periods not exceeding 30 years, except for deferred payment loans or loans that extend beyond 30 years which continue to serve eligible persons.

(h) ~~(i)~~ Loans or grants for eligible rental housing constructed, rehabilitated, or otherwise assisted from the local housing assistance trust fund must be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan unless reserved for eligible persons for 15 years or the term of the assistance, whichever period is longer. Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.

(i) ~~(j)~~ Loans or grants for eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan.

(j) ~~(k)~~ The total amount of monthly mortgage payments or the amount of monthly rent charged by the eligible sponsor or her or his designee must be made affordable.

(k) ~~(l)~~ The maximum sales price or value per unit and the maximum award per unit for eligible housing benefiting from awards made pursuant to this section must be established in the local housing assistance plan.

(l) ~~(m)~~ The benefit of assistance provided through the State

Housing Initiatives Partnership Program must accrue to eligible persons occupying eligible housing. This provision shall not be construed to prohibit use of the local housing distribution funds for a mixed income rental development.

(m)~~(n)~~ Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (c) or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding the provisions of paragraphs (a) and (c), program income as defined in s. 420.9071(26) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to

the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (f) ~~(g)~~ of this subsection.

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

Section 2. Subsection (27) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(27) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(i) ~~s. 420.9075(5)(j)~~ from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

Section 3. This act shall take effect July 1, 2025.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Judiciary, *Vice Chair*
Agriculture
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Health and Human Services
Banking and Insurance
Fiscal Policy
Rules

SENATOR COLLEEN BURTON
12th District

March 7, 2025

The Honorable Stan McClain
312 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Chair McClain,

I respectfully request SB 1714 Local Housing Assistance Plans be placed on the Community Affairs agenda at your earliest convenience.

Thank you for your consideration.

Regards,

Colleen Burton

CC: Elizabeth Fleming, Staff Director
Tatiana Warden, Committee Administrative Assistant

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

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1730
INTRODUCER:	Senator Calatayud
SUBJECT:	Affordable Housing
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Pre-meeting**
2.			RC	

I. Summary:

SB 1730 amends various provisions of the Live Local Act, passed during the 2023 Regular Session, related to the preemption of certain zoning and land use regulations to authorize affordable housing developments. Specifically, the bill:

- Clarifies the locations subject to authorization under the bill by defining certain zoning terms and providing for application in flexibly zoned areas, such as planned unit developments;
- Prohibits local governments from requiring amendments to certain agreements before allowing development;
- Prohibiting local governments from requiring a certain amount of residential usage in mixed used developments;
- Clarifies the nature of administrative approval of affordable housing developments;
- Requires local governments to reduce parking requirements, as opposed to considering such reduction;
- Provides for priority docketing and prevailing plaintiff's attorneys' fees in lawsuits brought under the Live Local Act; and
- Prohibits local governments from imposing building moratoria that would have the effect of delaying the permitting or construction of affordable housing developments, except in certain circumstances.

Outside of the Live Local Act, the bill also:

- Amends the evacuation time for the Florida Keys area of critical state concern;
- Enacts a state policy related to public sector and hospital employer-sponsored housing; and
- Clarifies that the Fair Housing Act prohibits local governments from discriminating in land use decisions based on the nature of a development as affordable housing.

The bill takes effect July 1, 2025.

II. Present Situation:

Affordable Housing

One major goal at all levels of government is to ensure that citizens have access to affordable housing. Housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened."

What makes housing "affordable" is a decrease in monthly rent so that income eligible households can pay less for the housing than it would otherwise cost at "market rate."[1] Lower monthly rent payment is a result of affordable housing financing that comes with an enforceable agreement from the developer to restrict the rent that can be charged based on the size of the household and the number of bedrooms in the unit.[2] The financing of affordable housing is made possible through government programs such as the federal Low-Income Housing Tax Credit Program and the Florida's State Apartment Incentive Loan program.[3]

Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development for every county and metropolitan area.[4] Florida Statutes categorizes the levels of household income as follows:

- Extremely low income – households at or below 30% AMI;[5]
- Very low income – households at or below 50% AMI;[6]
- Low income – households at or below 80% AMI;[7] and
- Moderate income – households at or below 120% AMI.[8]

Zoning and Land Use Preemption for Affordable Developments

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.[9] All development, both public and private, and all development orders[10] approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.[11] The Future Land Use

[1] The Florida Housing Coalition, *Affordable Housing in Florida*, p. 3, available at: https://flhousing.org/wp-content/uploads/2022/07/Affordable-Housing-in-Florida.pdf (last visited Mar. 26, 2025).
[2] *Id.*
[3] *Id.*
[4] U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2023 IL Documentation*, available at https://www.huduser.gov/portal/datasets/il.html#2021 (last visited Mar.26, 2025).
[5] Section 420.0004(9), F.S.
[6] Section 420.0004(17), F.S.
[7] Section 420.0004(11), F.S.
[8] Section 420.0004(12), F.S.
[9] Section 163.3167(2), F.S.
[10] "Development order" means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.
[11] Section 163.3194(3), F.S

Element in a comprehensive plan establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels[12] within that range are decided by a more detailed, implementing zoning map.[13]

The Live Local Act (act)[14] preempts certain county and municipal zoning and land use decisions to encourage development of affordable multifamily rental housing in targeted land use areas. Specifically, the act requires counties and municipalities to allow a multifamily or mixed-use residential[15] rental development in any area zoned for commercial, industrial, or mixed-use if the development meets certain affordability requirements.[16] To qualify, the proposed development must reserve 40 percent of the units for residents with incomes up to 120% AMI, for a period of at least 30 years.

Additionally, the local government may not restrict the density or floor area ratio of qualifying developments below the highest allowed density, or below 150 percent of the highest allowed floor area ratio, on land within its jurisdiction where residential development is allowed, and may not restrict the height below the highest currently allowed height for a commercial or residential development in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. Further height restrictions may apply where a proposed development is adjacent to single family residential development.

An application for a development must be administratively approved and no further action is required from the governing body of the local government if the development satisfies the local government's land development regulations for multifamily in areas zoned for such use and is otherwise consistent with the jurisdiction's comprehensive plan.

A local government must consider reducing parking requirements for these developments if they are located within one-half mile of a major transit stop, as such term is the local government's land development code, and the major transit stop is accessible from the development.

These provisions do not apply to recreational and commercial working waterfronts in industrial areas, and only mixed-use residential developments must be authorized under these provisions in areas where commercial or industrial capacity is exceptionally limited.

The act specifically requires that except as otherwise provided in the act, a qualifying development must comply with all applicable state and local laws and regulations.

These provisions are effective until October 1, 2033.

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[12] When local governments make changes to their zoning regulations or comprehensive plans some structures may no longer be in compliance with the newly approved zoning and may be deemed a "nonconforming use." A nonconforming use or structure is one in which the use or structure was legally permitted prior to a change in the law, and the change in law would no longer permit the re-establishment of such structure or use.

[13] Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

[14] The "Live Local Act", Ch. 2023-17, Laws of Fla., made various changes to affordable housing related programs and policies at the state and local levels, including zoning and land use preemptions favoring affordable housing, funding for state affordable housing programs, and tax provisions intended to incentivize affordable housing development.

[15] For mixed-use residential, at least 65 percent of the total square footage must be used for residential purposes.

[16] *See* ss. 125.01055(7) and 166.04151(7), F.S., this analysis section.

Development Agreements

Local governments may enter into development agreements with developers.[17] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[18]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[19] A development agreement must include certain statutorily required elements describing the terms of the contract.[20]

Priority Docketing

The Florida Rules of Judicial Administration govern the ways a judge controls a case in terms of timing and docketing. Some cases that come before a court are deemed priority cases, either directly in statute, in rule of procedure, or case law. Every judge has a duty to expedite priority cases to the extent reasonably possible.[21] For these cases judges are tasked with implementing docket control policies necessary to advance the case and ensure prompt resolution. [22] Docket control policies include setting deadlines for phases of the case, giving priority to hearings required to advance the case, and advancing the trial setting. A party in a priority status case may file a notice of priority status, and has recourse if they believe the case has not been appropriately advanced on the docket or received priority in scheduling.[23]

Florida Keys Area of Critical State Concern

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.[24] State, regional, and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development. Principles include protecting the environmental resources, historical heritage, and water quality of the Florida Keys.[25]

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[17] Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[18] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[19] Section 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[20] Section 163.3227(1), F.S.
[21] Fla. R. Jud. Admin. 2.215(g).
[22] Fla. R. Jud. Admin. 2.545(b).
[23] Fla. R. Jud. Admin. 2.545(c).
[24] The City of Key West functions as a separate area of critical state concern, called the City of Key West Area of Critical State Concern, with similar restrictions. Section 380.0552, F.S.; *2020 Florida Keys Area of Critical State Concern Annual Report* available at https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2 (last visited Mar. 26, 2025).
[25] For a full list of required considerations, *see* s. 380.0552(7), F.S.

A land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but such actions must be approved by the Florida Department of Commerce ("Commerce").[26] Amendments to local comprehensive plans must also be reviewed for compliance with several requirements: construction schedules, financing plans and compliance with construction standards for wastewater treatment and disposal facilities, and protection of public safety with maintenance of hurricane evacuation clearance time with standards developed by a hurricane evacuation study conducted under professionally accepted methodology.

Hurricane Evacuation Clearance Standards in the Florida Keys

The Florida Keys Area Protection Act[27] provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with "goals, objectives and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours." The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by Commerce.[28]

Affordable Housing Financing and Employer-Sponsored Housing Policy

Housing credits are a financial instrument, tax credits, issued through the Low Income Housing Tax Credit program.[29] After being allocated a certain amount of tax credits by the federal government based on population and need, the Florida Housing Finance Corporation allocates the funding to affordable housing developers. There are two types of credits:

- 9 percent credits, which are more valuable and limited. These are competitively bid for and can typically fund two-thirds of a development's total cost; and
- 4 percent credits, which are not limited and considered "non-competitive." These typically fund one third of a development's total cost.

The Federal Internal Revenue Service provides requirements for developments that can qualify as low-income housing for the purpose of administering certain financing such as these tax credits.[30] One requirement is that, in general, a project be available for general public use. Exceptions to this requirement permit occupancy restrictions or preferences that favor tenants:[31]

- With special needs;
- Who are members of a specified group under a federal or state program or policy that supports housing for such group; or
- Who are involved in artistic or literary activities.

[26] Section 380.0552(9)(a), F.S.
[27] Section 380.0552, F.S.
[28] Section 380.0552(9)(a)2., F.S.
[29] Florida Housing Finance Corporation, *Housing Credits*, available at https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits (last visited Mar. 26, 2025).
[30] I.R.C. 42(g).
[31] I.R.C. 42(g)(9).

Fair Housing

The Florida Fair Housing Act[32] prohibits discrimination in housing-related activities, including the sale, rental, and financing of housing. The law protects individuals from discrimination based on race, color, national origin, sex, disability, familial status, or religion. The law also specifically prohibits local governments from discriminatory practices in land use decisions and development permitting, including discrimination based on the source of financing of a development, except as otherwise provided by law.[33] The Act is enforced by the Florida Commission on Human Relations, which investigates complaints and can seek legal remedies for violations.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 125.01055 and 166.04151, F.S., related to the administrative approval of certain affordable housing developments under the Live Local Act. The amendments are organized below.

Application, Definitions, and Clarity

The bill amends several areas to more clearly define what areas are subject to the provisions of each statute's subsection 7, requiring the authorization of certain affordable housing developments. In an attempt to clarify applicability where traditional zoning is not utilized on a local level, the bill provides that the provisions apply in portions of any flexibly zoned areas such as a planned unit development permitted for commercial, industrial, or mixed use.

The bill further provides definitions for "commercial use," "industrial use," and "mixed use." Each definition is intended to function only for the purposes of the section and meant to apply regardless of the local regulation's categorization.

- "Commercial use" is defined as activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The bill provides examples, and provides that accessory, ancillary, incidental, or temporary commercial uses are not enough to make a parcel zoned for commercial use for the purposes of the section. Additionally, recreational use, such as golf courses and tennis courts, within residential areas are not considered commercial use.
- "Industrial use" is defined as activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The bill provides examples and contains the same caveats as under commercial use, including the exclusion of recreational areas.
- "Mixed use" is defined as any use that combines multiple types of approved land uses from at least two of the residential, commercial, and industrial categories. The bill contains the same caveats as above, including the exclusion of recreational areas.

Amendments to Preemptive Provisions

The bill also amends certain functions of the required administrative approval process and parameters for the scope of the preemption. The bill clarifies on administrative approval that the

[32] Sections 760.20-760.37, F.S.
[33] Section 760.26, F.S.

action must occur without further action by the governing body of the local government or any quasi-judicial or administrative board or reviewing body.

The bill further provides that, pursuant to administrative approval, a local government may not require a proposed multifamily development to obtain a transfer of density or development units, an amendment to a development or regional impact, an amendment to a development agreement, or an amendment to a restrictive covenant. Additionally, a local government may not require that more than 10 percent of the total square footage of a proposed mixed-use residential project be used for nonresidential purposes.

The height preemption is amended to say that a county may not restrict the height of a proposed development below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile. The parking preemption is specified to provide that a local government must reduce parking requirements by at least 20 percent upon request.

Civil Actions Under the Act

The bill contains several provisions related to litigation arising from this subsection of law. The bill provides that a court shall give any civil action filed against a local government for a violation priority over other pending cases and render a preliminary or final decision as expeditiously as possible. Further, the bill provides that the court must assess and award reasonable attorney fees and costs and damages, not exceeding $100,000, to a prevailing plaintiff in such an action. Attorney fees incurred to determine an award of fees and costs are not recoverable.

Moratoria

The bill creates a new subsection of ss. 125.01055 and 166.04151, F.S., to preempt local governments from imposing building moratoria that have the effect of delaying the permitting or construction of a development under subsection (7).

As an exception, a local government may impose such a moratorium by ordinance for no more than 90 days in any 3-year period after preparing, publishing, and presenting an assessment of the locality's need for affordable housing.

The bill provides that, in a civil action filed against a local government under the subsection on moratoria, the court must assess and award reasonable attorney fees and costs and damages, not exceeding $100,000, to a prevailing plaintiff in such an action. Attorney fees incurred to determine an award of fees and costs are not recoverable.

Section 3 provides that an applicant for a proposed development authorized under ss. 125.01055(7) or 166.04151(7), F.S., who submitted documentation before July 1, 2025, may proceed under the provisions of law as they existed at the time of submission, or notify the local government of their intent to revise their submission to account for the changes made by the bill.

Section 4 amends s. 380.0552, F.S., to amend the hurricane evacuation clearance time which subject local governments must base comprehensive planning around from twenty-four to

twenty-six hours. **Section 5** provides that the intent of the Legislature in this amendment is to accommodate the building of additional developments to ameliorate the acute affordable housing and building permit allocation shortage. The Legislature thereby intends that local governments manage growth authorized by the amendment with a focus on long-term stability and affordable housing for the local workforce.

Section 6 creates s. 420.5098, F.S., to institute a state housing policy on public sector and hospital employer-sponsored housing. The bill provides that it is the policy of the state to support housing for employees of hospitals, health care facilities, and governmental entities and to allow developers using low-income housing tax credits and other sources of funding to create a preference for housing for such employees. However, such preference must conform with the requirements provided under federal law.

Section 7 amends s. 760.26, F.S., to provide that it is unlawful to discriminate in land use decisions or in the permitting of development based on the nature of a development or proposed development as affordable housing, except as otherwise provided by law.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 166.04151, 380.0552, and 760.26.

The bill creates an undesignated section of Florida law.

This bill creates the following section of the Florida Statutes: 420.5098.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Calatayud) recommended the following:

Senate Amendment (with title amendment)

Delete lines 62 - 425

and insert:

paragraph (p), a new paragraph (l) and paragraphs (m), (n), and (o) are added to that subsection, subsection (9) is added to that section, and paragraphs (a) through (f) and (k) of subsection (7) of that section are amended, to read:

125.01055 Affordable housing.—

(7)(a) A county must authorize multifamily and mixed-use

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residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a county may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional impact, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The county may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(b) A county may not restrict the density of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, density on any unincorporated land in the county where residential development is allowed under the county's land development regulations. For purposes of this paragraph, the term "highest currently allowed density" does not include the density of any building that met the requirements of this subsection or the density of any building that has received any bonus, variance, or other special exception for density provided in the county's land development

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regulations as an incentive for development.

(c) A county may not restrict the floor area ratio of a proposed development authorized under this subsection below 150 percent of the highest currently allowed, or allowed on July 1, 2023, floor area ratio on any unincorporated land in the county where development is allowed under the county's land development regulations. For purposes of this paragraph, the term "highest currently allowed floor area ratio" does not include the floor area ratio of any building that met the requirements of this subsection or the floor area ratio of any building that has received any bonus, variance, or other special exception for floor area ratio provided in the county's land development regulations as an incentive for development. For purposes of this subsection, the term "floor area ratio" includes floor lot ratio.

(d)1. A county may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. For purposes of this paragraph, the term "highest currently allowed height" does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the county's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use

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which is within a single-family residential development with at least 25 contiguous single-family homes, the county may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed, or allowed on July 1, 2023, height for the property provided in the county's land development regulations, or 3 stories, whichever is higher, but not to exceed 10 stories. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a public road.

(e) A proposed development authorized under this subsection must be administratively approved without ~~and no~~ further action by the board of county commissioners or any quasi-judicial or administrative board or reviewing body ~~is required~~ if the development satisfies the county's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. Each county shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection.

(f)1. A county must, upon request of an applicant, reduce ~~consider reducing~~ parking requirements by 20 percent for a

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proposed development authorized under this subsection if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the county's land development code, and the transit stop is accessible from the development;~~.~~

~~2. A county must reduce parking requirements by at least 20 percent for a proposed development authorized under this subsection if the development:~~

b.~~a.~~ Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; or ~~and~~

c.~~b.~~ Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, a county may not require that the available parking compensate for the reduction in parking requirements.

2.~~3.~~ A county must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the county as a transit-oriented development or area, as provided in paragraph (h).

3.~~4.~~ For purposes of this paragraph, the term "major transportation hub" means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(k) Notwithstanding any other law or local ordinance or regulation to the contrary, a county may allow an adjacent

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parcel of land to be included within a proposed multifamily development authorized under this subsection.

(l) This subsection does not apply to:

1. Airport-impacted areas as provided in s. 333.03.

2. Property defined as recreational and commercial working waterfront in s. 342.201(2)(b) in any area zoned as industrial.

3. The Wekiva Study Area, as described in s. 369.316.

4. The Everglades Protection Area, as defined in s. 373.4592(2).

(m) The court shall give any civil action filed against a county for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(n) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed $200,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(o) As used in this subsection, the term:

1. "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel

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zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include home-based businesses or cottage food operations undertaken on residential property, uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of the manner in which they are operated.

2. "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not industrial use, irrespective of the manner in which they are

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operated.

3. "Mixed use" means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of the manner in which they are operated.

4. "Planned unit development" has the same meaning as provided in s. 163.3202(5)(b).

(9)(a) A county may not impose a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7) except as provided in paragraph (b).

(b) A county may, by ordinance, impose such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the county shall prepare or cause to be prepared an assessment of the county's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, including projections of such need for the next 5 years. This assessment must be posted on the county's website by the date the notice of proposed enactment is published, and presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the board of county commissioners. This assessment must be included in the business

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impact estimate for the ordinance imposing such a moratorium required by s. 125.66(3).

(c) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed $200,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(d) This subsection does not apply to moratoria imposed due to unavailability of public facilities or services or imposed to address stormwater or flood water management, if such moratoria apply equally to all types of multifamily or mixed-use residential development.

Section 2. Present paragraph (l) of subsection (7) of section 166.04151, Florida Statutes, is redesignated as paragraph (p), a new paragraph (l) and paragraphs (m), (n), and (o) are added to that subsection, subsection (9) is added to that section, and paragraphs (a) through (f) and (k) of subsection (7) of that section are amended, to read:

166.04151 Affordable housing.—

(7)(a) A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are

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affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional impact, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The municipality may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(b) A municipality may not restrict the density of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, density on any land in the municipality where residential development is allowed under the municipality's land development regulations. For purposes of this paragraph, the term "highest currently allowed density" does not include the density of any building that met the requirements of this subsection or the density of any building that has received any bonus, variance, or other special exception for density provided in the municipality's land development regulations as an incentive for development.

(c) A municipality may not restrict the floor area ratio of a proposed development authorized under this subsection below 150 percent of the highest currently allowed, or allowed on July 1, 2023, floor area ratio on any land in the municipality where development is allowed under the municipality's land development

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regulations. For purposes of this paragraph, the term "highest currently allowed floor area ratio" does not include the floor area ratio of any building that met the requirements of this subsection or the floor area ratio of any building that has received any bonus, variance, or other special exception for floor area ratio provided in the municipality's land development regulations as an incentive for development. For purposes of this subsection, the term "floor area ratio" includes floor lot ratio.

(d)1. A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. For purposes of this paragraph, the term "highest currently allowed height" does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the municipality's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use that is within a single-family residential development with at least 25 contiguous single-family homes, the municipality may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed, or allowed on July 1, 2023, height for the property provided in the municipality's

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land development regulations, or 3 stories, whichever is higher, not to exceed 10 stories. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a public road or body of water, including man-made lakes or ponds.

(e) A proposed development authorized under this subsection must be administratively approved without ~~and no~~ further action by the governing body of the municipality or any quasi-judicial or administrative board or reviewing body ~~is required~~ if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. Each municipality shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection.

(f)1. A municipality must, upon request of an applicant, reduce ~~consider reducing~~ parking requirements for a proposed development authorized under this subsection by 20 percent if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the municipality's land development code, and the transit stop is accessible from the development;~~.~~

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~~2. A municipality must reduce parking requirements by at least 20 percent for a proposed development authorized under this subsection if the development:~~

b.~~a.~~ Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; or~~.~~

c.~~b.~~ Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, a municipality may not require that the available parking compensate for the reduction in parking requirements.

2.~~3.~~ A municipality must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the municipality as a transit-oriented development or area, as provided in paragraph (h).

3.~~4.~~ For purposes of this paragraph, the term "major transportation hub" means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(k) Notwithstanding any other law or local ordinance or regulation to the contrary, a municipality may allow an adjacent parcel of land to be included within a proposed multifamily development authorized under this subsection.

(l) This subsection does not apply to:

1. Airport-impacted areas as provided in s. 333.03.

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2. Property defined as recreational and commercial working waterfront in s. 342.201(2)(b) in any area zoned as industrial.

3. The Wekiva Study Area, as described in s. 369.316.

4. The Everglades Protection Area, as defined in s. 373.4592(2).

(m) The court shall give any civil action filed against a municipality for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(n) If a civil action is filed against a municipality for a violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed $200,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(o) As used in this subsection, the term:

1. "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does

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not include home-based businesses or cottage food operations undertaken on residential property, uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of the manner in which they are operated.

2. "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not industrial, irrespective of the manner in which they are operated.

3. "Mixed-use" means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not

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include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of the manner in which they are operated.

4. "Planned unit development" has the same meaning as provided in s. 163.3202(5)(b).

(9)(a) A municipality may not impose a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7) except as provided in paragraph (b).

(b) A municipality may, by ordinance, impose such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the municipality shall prepare or cause to be prepared an assessment of the municipality's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, including projections of such need for the next 5 years. This assessment must be posted on the municipality's website by the date the notice of proposed enactment is published and must be presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the governing body of the municipality. This assessment must be included in the business impact estimate for the ordinance imposing such a moratorium required by s. 166.041(4).

(c) If a civil action is filed against a municipality for a

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violation of this subsection, the court must assess and award reasonable attorney fees and costs to the prevailing party. An award of reasonable attorney fees or costs pursuant to this subsection may not exceed $200,000. In addition, a prevailing party may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(d) This subsection does not apply to moratoria imposed due to unavailability of public facilities or services or imposed to address stormwater or flood water management, if such moratoria apply equally to all types of multifamily or mixed-use residential development.

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

And the title is amended as follows:

Delete lines 13 - 32

and insert:

density, floor area ratio, or height below which counties and municipalities may not restrict certain developments; requiring the administrative approval of certain proposed developments without further action by a quasi-judicial or administrative board or reviewing body under certain circumstances; requiring counties and municipalities to reduce parking requirements by a specified percentage for certain proposed developments under certain circumstances; requiring counties and municipalities to allow adjacent parcels of land to be included within certain proposed developments; revising applicability;

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requiring a court to give priority to and render expeditious decisions in certain civil actions; requiring a court to award reasonable attorney fees and costs to a prevailing party in certain civil actions; providing that such attorney fees or costs may not exceed a specified dollar amount; prohibiting the prevailing party from recovering certain other fees or costs; defining terms; prohibiting counties and municipalities from imposing certain building moratoriums; providing an exception, subject to certain requirements; providing applicability; authorizing

By Senator Calatayud

38-01885A-25 20251730__

A bill to be entitled

An act relating to affordable housing; amending ss. 125.01055 and 166.04151, F.S.; requiring counties and municipalities, respectively, to authorize multifamily and mixed-use residential as allowable uses in portions of flexibly zoned areas under certain circumstances; prohibiting counties and municipalities from imposing certain requirements on proposed multifamily developments; prohibiting counties and municipalities from requiring that more than a specified percentage of a mixed-use residential project be used for certain purposes; revising the height below which counties and municipalities may not restrict certain developments; requiring the administrative approval of certain proposed developments without further action by a quasi-judicial or administrative board or reviewing body under certain circumstances; requiring counties and municipalities to reduce parking requirements by at least a specified percentage for certain proposed developments under certain circumstances; requiring a court to give priority to and render expeditious decisions in certain civil actions; requiring a court to award reasonable attorney fees and costs and damages to a prevailing plaintiff in certain civil actions; providing that such attorney fees or costs and damages may not exceed a specified dollar amount; prohibiting the prevailing plaintiff from recovering certain other fees or costs; defining terms;

prohibiting counties and municipalities from imposing certain building moratoriums; providing an exception, subject to certain requirements; authorizing applicants for certain proposed developments to notify the county or municipality, as applicable, by a specified date of its intent to proceed under certain provisions; requiring counties and municipalities to allow certain applicants to submit revised applications, written requests, and notices of intent to account for changes made by the act; amending s. 380.0552, F.S.; revising the maximum hurricane evacuation clearance time for permanent residents, which time is an element for which amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance; providing legislative intent; creating s. 420.5098, F.S.; providing legislative findings and intent; defining terms; providing that it is the policy of the state to support housing for certain employees and to permit developers in receipt of certain tax credits and funds to create a specified preference for housing certain employees; requiring that such preference conform to certain requirements; amending s. 760.26, F.S.; providing that it is unlawful to discriminate in land use decisions or in the permitting of development based on the specified nature of a development or proposed development; providing an effective date.

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

Section 1. Present paragraph (l) of subsection (7) of section 125.01055, Florida Statutes, is redesignated as paragraph (o), a new paragraph (l) and paragraphs (m) and (n) are added to that subsection, subsection (9) is added to that section, and paragraphs (a), (d), (e), and (f) of subsection (7) are amended, to read:

125.01055 Affordable housing.—

(7)(a) A county must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a county may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional impact, amendment to a development agreement, amendment to a restrictive covenant, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The county may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(d) 1. A county may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. For purposes of this paragraph, the term "highest currently allowed height" does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the county's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use which is within a single-family residential development with at least 25 contiguous single-family homes, the county may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed height for the property provided in the county's land development regulations, or 3 stories, whichever is higher. For the purposes of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a public road.

(e) A proposed development authorized under this subsection must be administratively approved without ~~and no~~ further action by the board of county commissioners or any quasi-judicial or administrative board or reviewing body ~~is required~~ if the development satisfies the county's land development regulations

for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. Each county shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection.

(f)1. A county must, upon request of an applicant, reduce ~~consider reducing~~ parking requirements by at least 20 percent for a proposed development authorized under this subsection if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the county's land development code, and the transit stop is accessible from the development;~~.~~

~~2. A county must reduce parking requirements by at least 20 percent for a proposed development authorized under this subsection if the development:~~

b.~~a.~~ Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; or ~~and~~

c.~~b.~~ Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by

residents of the proposed development. However, a county may not require that the available parking compensate for the reduction in parking requirements.

2.~~3.~~ A county must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the county as a transit-oriented development or area, as provided in paragraph (h).

3.~~4.~~ For purposes of this paragraph, the term "major transportation hub" means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(l) The court shall give any civil action filed against a county for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(m) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs and damages to the prevailing plaintiff. An award of reasonable attorney fees or costs and damages pursuant to this subsection may not exceed $100,000. In addition, a prevailing plaintiff may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(n) As used in this subsection, the term:

1. "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants;

food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of how they are operated.

2. "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are

not industrial use, irrespective of how they are operated.

3. "Mixed use" means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of how they are operated.

4. "Planned unit development" has the same meaning as provided in s. 163.3202(5)(b).

(9)(a) A county may not impose a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7) except as provided in paragraph (b).

(b) A county may, by ordinance, impose such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the county shall prepare or cause to be prepared an assessment of the county's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, including projections of such need for the next 5 years. This assessment must be posted on the county's website by the date the notice of proposed enactment is published, and presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the board of county commissioners. This assessment must be included in the business impact estimate for the ordinance imposing such a moratorium

required by s. 125.66(3).

(c) If a civil action is filed against a county for a violation of this subsection, the court must assess and award reasonable attorney fees and costs and damages to the prevailing plaintiff. An award of reasonable attorney fees or costs and damages pursuant to this subsection may not exceed $100,000. In addition, a prevailing plaintiff may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

Section 2. Present paragraph (l) of subsection (7) of section 166.04151, Florida Statutes, is redesignated as paragraph (o), a new paragraph (l) and paragraphs (m) and (n) are added to that subsection, subsection (9) is added to that section, and paragraphs (a), (d), (e), and (f) of subsection (7) are amended, to read:

166.04151 Affordable housing.—

(7)(a) A municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use, and in portions of any flexibly zoned area such as a planned unit development permitted for commercial, industrial, or mixed use, if at least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density or development units, amendment to a development of regional

impact, amendment to a development agreements, amendment to a restrictive covenant, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes. The municipality may not require that more than 10 percent of the total square footage of such mixed-use residential projects be used for nonresidential purposes.

(d)1. A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed, or allowed on July 1, 2023, height for a commercial or residential building located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher. For purposes of this paragraph, the term "highest currently allowed height" does not include the height of any building that met the requirements of this subsection or the height of any building that has received any bonus, variance, or other special exception for height provided in the municipality's land development regulations as an incentive for development.

2. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use that is within a single-family residential development with at least 25 contiguous single-family homes, the municipality may restrict the height of the proposed development to 150 percent of the tallest building on any property adjacent to the proposed development, the highest currently allowed height for the property provided in the municipality's land development regulations, or 3 stories, whichever is higher. For the purposes

of this paragraph, the term "adjacent to" means those properties sharing more than one point of a property line, but does not include properties separated by a public road or body of water, including man-made lakes or ponds.

(e) A proposed development authorized under this subsection must be administratively approved without ~~and no~~ further action by the governing body of the municipality or any quasi-judicial or administrative board or reviewing body ~~is required~~ if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, floor area ratios, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements. A proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. Each municipality shall maintain on its website a policy containing procedures and expectations for administrative approval pursuant to this subsection.

(f)1. A municipality must, upon request of an applicant, reduce ~~consider reducing~~ parking requirements for a proposed development authorized under this subsection if the development:

a. Is located within one-quarter mile of a transit stop, as defined in the municipality's land development code, and the transit stop is accessible from the development;~~.~~

~~2. A municipality must reduce parking requirements by at least 20 percent for a proposed development authorized under this subsection if the development:~~

b.~~a.~~ Is located within one-half mile of a major transportation hub that is accessible from the proposed development by safe, pedestrian-friendly means, such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; or~~.~~

c.~~b.~~ Has available parking within 600 feet of the proposed development which may consist of options such as on-street parking, parking lots, or parking garages available for use by residents of the proposed development. However, a municipality may not require that the available parking compensate for the reduction in parking requirements.

2.~~3.~~ A municipality must eliminate parking requirements for a proposed mixed-use residential development authorized under this subsection within an area recognized by the municipality as a transit-oriented development or area, as provided in paragraph (h).

3.~~4.~~ For purposes of this paragraph, the term "major transportation hub" means any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

(l) The court shall give any civil action filed against a municipality for a violation of this subsection priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

(m) If a civil action is filed against a municipality for a violation of this subsection, the court must assess and award reasonable attorney fees and costs and damages to the prevailing plaintiff. An award of reasonable attorney fees or costs and damages pursuant to this subsection may not exceed $100,000. In

addition, a prevailing plaintiff may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

(n) As used in this subsection, the term:

1. "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered commercial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not commercial use, irrespective of how they are operated.

2. "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The term includes, but is not limited to, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage

treatment plants, and solid waste disposal sites. A parcel zoned to permit such uses by right without the requirement to obtain a variance or waiver is considered industrial use for the purposes of this section, irrespective of the local land development regulation's listed category or title. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not industrial, irrespective of how they are operated.

3. "Mixed-use" means any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories. The term does not include uses that are accessory, ancillary, incidental to the allowable uses, or allowed only on a temporary basis. Recreational uses, such as golf courses, tennis courts, swimming pools, and clubhouses, within an area designated for residential use are not mixed use, irrespective of how they are operated.

4. "Planned unit development" has the same meaning as provided in s. 163.3202(5)(b).

(9)(a) A municipality may not impose a building moratorium that has the effect of delaying the permitting or construction of a multifamily residential or mixed-use residential development authorized under subsection (7) except as provided in paragraph (b).

(b) A municipality may, by ordinance, impose such a building moratorium for no more than 90 days in any 3-year period. Before adoption of such a building moratorium, the municipality shall prepare or cause to be prepared an assessment

of the municipality's need for affordable housing at the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, including projections of such need for the next 5 years. This assessment must be posted on the municipality's website by the date the notice of proposed enactment is published and must be presented at the same public meeting at which the proposed ordinance imposing the building moratorium is adopted by the governing body of the municipality. This assessment must be included in the business impact estimate for the ordinance imposing such a moratorium required by s. 166.041(4).

(c) If a civil action is filed against a municipality for a violation of this subsection, the court must assess and award reasonable attorney fees and costs and damages to the prevailing plaintiff. An award of reasonable attorney fees or costs and damages pursuant to this subsection may not exceed $100,000. In addition, a prevailing plaintiff may not recover any attorney fees or costs directly incurred by or associated with litigation to determine an award of reasonable attorney fees or costs.

Section 3. An applicant for a proposed development authorized under s. 125.01055(7), Florida Statutes, or s. 166.04151(7), Florida Statutes, who submitted an application, written request, or notice of intent to use such provisions to the county or municipality and which application, written request, or notice of intent has been received by the county or municipality, as applicable, before July 1, 2025, may notify the county or municipality by July 1, 2025, of its intent to proceed under the provisions of s. 125.01055(7), Florida Statutes, or s. 166.04151(7), Florida Statutes, as they existed at the time of

submittal. A county or municipality, as applicable, shall allow an applicant who submitted such application, written request, or notice of intent before July 1, 2025, the opportunity to submit a revised application, written request, or notice of intent to account for the changes made by this act.

Section 4. Paragraph (a) of subsection (9) of section 380.0552, Florida Statutes, is amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal

systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 26 ~~24~~ hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency. For purposes of hurricane evacuation clearance time:

a. Mobile home residents are not considered permanent residents.

b. The City of Key West Area of Critical State Concern established by chapter 28-36, Florida Administrative Code, shall be included in the hurricane evacuation study and is subject to the evacuation requirements of this subsection.

Section 5. It is the intent of the Legislature that the amendment made by this act to s. 380.0552, Florida Statutes, will accommodate the building of additional developments within the Florida Keys to ameliorate the acute affordable housing and building permit allocation shortage. The Legislature also intends that local governments subject to the hurricane evacuation clearance time restrictions on residential buildings manage growth with a heightened focus on long-term stability and affordable housing for the local workforce.

Section 6. Section 420.5098, Florida Statutes, is created to read:

420.5098 Public sector and hospital employer-sponsored housing policy.—

(1) The Legislature finds that it is in the best interests

of the state and the state's economy to provide affordable housing to state residents employed by hospitals, health care facilities, and governmental entities in order to attract and maintain the highest quality labor by incentivizing such employers to sponsor affordable housing opportunities. Section 42(g)(9)(B) of the Internal Revenue Code provides that a qualified low-income housing project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants who are members of a specified group under a state program or policy that supports housing for such specified group. Therefore, it is the intent of the Legislature to establish a policy that supports the development of affordable workforce housing for employees of hospitals, health care facilities, and governmental entities.

(2) For purposes of this section, the term:

(a) "Governmental entity" means any state, regional, county, local, or municipal governmental entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of the state; any public school, state university, or Florida College System institution; or any special district as defined in s. 189.012.

(b) "Health care facility" has the same meaning as provided in s. 159.27(16).

(c) "Hospital" means a hospital under chapter 155, a hospital district created pursuant to chapter 189, or a hospital licensed pursuant to chapter 395, including corporations not for profit that are qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and for-profit entities.

(3) It is the policy of the state to support housing for employees of hospitals, health care facilities, and governmental entities and to allow developers in receipt of federal low-income housing tax credits allocated pursuant to s. 420.5099, local or state funds, or other sources of funding available to finance the development of affordable housing to create a preference for housing for such employees. Such preference must conform to the requirements of s. 42(g)(9) of the Internal Revenue Code.

Section 7. Section 760.26, Florida Statutes, is amended to read:

760.26 Prohibited discrimination in land use decisions and in permitting of development.—It is unlawful to discriminate in land use decisions or in the permitting of development based on race, color, national origin, sex, disability, familial status, religion, or, except as otherwise provided by law, the source of financing of a development or proposed development or the nature of a development or proposed development as affordable housing.

Section 8. This act shall take effect July 1, 2025.

The Florida Senate

Committee Agenda Request

To: Senator Stan McClain, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: March 10, 2025

I respectfully request that **Senate Bill #1730**, relating to Affordable Housing, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Alexis Calatayud

Senator Alexis Calatayud
Florida Senate, District 38

File signed original with committee office

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 1822
INTRODUCER:	Senator Martin
SUBJECT:	Regulation of Auxiliary Containers
DATE:	March 28, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	**Favorable**
2.	Hackett	Fleming	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 1822 provides that the regulation of auxiliary containers is expressly preempted to the state. The bill defines "auxiliary containers" as a reusable or single-use bag, cup, bottle, can, or other packaging that is:

- Made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates; and
- Designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a public food service establishment, a food establishment, or a retailer, as defined by Florida law.

The bill removes a provision requiring the Department of Environmental Protection (DEP) to review and update its 2010 retail bags report that analyzed the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags. The bill also removes a provision that prohibits a local government, local government agency, or state government agency from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers until the Legislature adopts DEP's recommendations in the updated retail bags report.

The bill takes effect July 1, 2025.

II. Present Situation:

Auxiliary Containers

Plastics are found in a variety of nondurable products, such as disposable diapers, trash bags, cups, utensils, medical devices, and household items.[1] Plastic food service items are generally made of clear or foamed polystyrene, while trash bags are made of high-density polyethylene or low-density polyethylene.[2]

Plastics are a rapidly growing segment of municipal solid waste.[3] The United Nations has estimated that the world consumes between 1 trillion and 5 trillion plastic bags per year.[4] In the United States, fewer than 10 percent of plastic bags are recycled per year.[5] In Florida, about 5-6 million tons of collected municipal solid waste per year are single-use carryout packaging (SUCP).[6]

Improperly managed SUCP can end up in Florida's environment, littering roads, clogging stormwater systems, polluting freshwater sources, and harming the state's marine ecosystems.[7] One estimate places the amount of all plastics entering Florida's marine environment in 2020 at roughly 7,000 tons.[8] Based on citizen science data, the total number of large litter items collected in 2020 from Florida shorelines was 542,544 units (reported as 102 tons), of which SUCP comprised approximately 10 percent (on a unit basis).[9]

The environmental damage caused by auxiliary containers and single-use plastics has prompted a global effort to limit their use.[10]

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[1] U.S. Environmental Protection Agency (EPA), *Plastics: Material-Specific Data*, https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data (last visited Mar. 26, 2025).
[2] *Id.*
[3] *Id.*
[4] United Nations Environment Programme, *Single-Use Plastics: A Roadmap for Sustainability*, viii (2018), *available at* https://www.unep.org/resources/report/single-use-plastics-roadmap-sustainability (last visited Mar. 26, 2025)
[5] EPA, *Advancing Sustainable Materials Management: 2016 and 2017 Tables and Figures*, 40 (2019), *available at* https://www.epa.gov/sites/default/files/2019-11/documents/2016_and_2017_facts_and_figures_data_tables_0.pdf (last visited Mar. 26, 2025)
[6] Florida Dep't of Environmental Protection (DEP), *Update of the 2010 Retail Bags Report*, 3 (2021), *available at* https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf. In its report, DEP defines SUCP as including (1) auxiliary containers (a secondary container into which a product is placed for transport by a consumer. It includes, but is not limited to, reusable bags, paper bags, gift bags, gift boxes, hat boxes, cloth bags, and food takeout boxes and clamshells. Disposable plastic bags have been intentionally excluded from this definition); (2) wrappings (plastic films that are used to protect and transport the items within them; including, but not limited to, dry-cleaning, meats, fruits, bulk products, sandwiches, and newspaper. The focus for wrappings is on the external wrappings and not materials such as bubble wrap and tissue paper); and (3) disposable plastic bags (disposable plastic film bags used by the consumer to carry products from restaurants and retail establishments in the sale of products and goods. These bags are not necessarily meant to be reused multiple times but may have beneficial secondary uses and may be recycled at certain retail establishments). *Id.* at 2.
[7] *Id.* at 4.
[8] *Id.* at 5.
[9] *Id.*
[10] *See* United Nations Environment Programme, *Resolution adopted by the United Nations Assembly on 15 March 2019: Resolution 4/9: Addressing single-use products pollution*, 1-2 (2019), *available at* https://wedocs.unep.org/bitstream/handle/20.500.11822/28473/English.pdf?sequence=3&isAllowed=y (last visited Mar. 26, 2025)

State Regulation of Auxiliary Containers

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature enacted s. 403.7033, F.S., in 2008, which required DEP to analyze the need for new or different regulations on auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.[11] DEP's initial report was submitted in 2010, and in 2021, the Legislature directed DEP to review and update its 2010 report by December 31, 2021.[12] DEP submitted the updated report with its conclusions and recommendations on December 27, 2021.[13]

Section 403.7033, F.S., also prohibits local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations.[14] To date, the Legislature has not adopted any recommendations contained in the report and the prohibition remains in effect.[15]

Further, s. 500.90, F.S., provides that the regulation of the use or sale of polystyrene products by entities regulated under the Florida Food Safety Act (chapter 500, F.S.) is preempted to the Department of Agriculture and Consumer Services.[16] In addition, s. 403.708(9), F.S., provides that the packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974, other than as expressly provided by law.

Some cities in Florida have passed ordinances that regulate single-use plastics or polystyrene on city property.[17] In 2016, the City of Coral Gables enacted an ordinance prohibiting food service providers and stores from selling or using expanded polystyrene (i.e. Styrofoam) containers.[18] In 2019, the Third District Court of Appeal held that ss. 500.90, 403.7033, and 403.708(9), F.S., expressly preempted the city's ordinance regulating polystyrene.[19]

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[11] Ch. 2008-227, s. 96, Laws of Fla.; Section 403.7033, F.S.
[12] *See* ch. 2021-125, s. 1, Laws of Fla.
[13] DEP, *Update of the 2010 Retail Bags Report* (2021), *available at* https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf (last visited Mar. 26, 2025)
[14] Section 403.7033, F.S.
[15] *Id.*
[16] This preemption does not apply to local ordinances enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law. Section 500.90, F.S.
[17] *See, e.g.*, City of Atlantic Beach, Fla., Code of Ordinances, § 5-5 (prohibiting the use, sale, or distribution of polystyrene foam products on city properties and the beach); City of Boca Raton, Fla., Code of Ordinances, § 9-110 (prohibiting the sale or distribution of polystyrene foam products); City of Deerfield Beach, Fla., Code of Ordinances, § 34-170 (prohibiting the sale or use of Styrofoam/expanded polystyrene food service articles by city contractors and special event permittees); City of Fort Lauderdale, Fla., Code of Ordinances, §§ 16-153 and 16-154 (prohibiting the use of polystyrene products by individuals, temporary vendors, city contractors, and special event permittees while located or operating on city property or city facilities); City of Gainesville, Fla., Code of Ordinances, §§ 27-90 and 27-92 (prohibiting the use of single-use plastic straws and the use of expanded polystyrene containers on city property).
[18] *Fla. Retail Federation v. City of Coral Gables*, 282 So. 3d 889, 891 (Fla. 3d DCA 2019).
[19] *Id.* at 896.

State Preemption

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law.[20] In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.[21]

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[22] Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[23] Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[24]

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[25] Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitution, county charter, or statute.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 403.703, F.S., which provides definitions for part IV of chapter 403, F.S. The bill defines "auxiliary container" as a reusable or single-use bag, cup, bottle, can, or other packaging that is:

- Made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates; and

[20] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).
[21] *Sarasota Alliance for Fair Elections v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (quoting *Phantom of Clearwater v. Pinellas County*, 894 So. 2d 1011, 1019 (Fla. 2d DCA 2005)).
[22] FLA. CONST., art. VIII, s. 1.(f).
[23] FLA. CONST., art. VIII, s. 1.(g).
[24] FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.
[25] Sections 125.01(1)(d)(e)(f) and (k)1., F.S.
[26] Section 166.021(3), F.S.

- Designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a public food service establishment,[27] a food establishment,[28] or a retailer.[29]

Section 2 amends s. 403.7033, F.S., which regulates the analysis of certain recyclable materials by the Department of Environmental Protection (DEP). The bill provides that the regulation of auxiliary containers is expressly preempted to the state. In addition, the bill removes the language that:

- Emphasized legislative intent that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy;
- Required DEP to review and update their 2010 report on retail bags that included input from stakeholders analyzing the need for new or different regulation of auxiliary containers;
- Prohibited local or state government agencies from enacting any rule, regulation, or ordinance, until the Legislature adopts DEP's recommendations.

Section 3 makes conforming changes.

Section 4 provides an effective date of July 1, 2025.

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.

[27] "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. Section 509.013(5)(a), F.S. The definition excludes several types of entities, such as places maintained and operated by churches and public or private schools, colleges, or universities, or any theater or place of business where the food available for consumption is limited to beverages, popcorn, or prepackaged items. Section 509.013(5)(b), F.S.

[28] "Food establishment" means a factory, food outlet, or other facility manufacturing, processing, packing, holding, storing, or preparing food or selling food at wholesale or retail. Certain exceptions apply. Section 500.03(1)(p), F.S.

[29] "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state. Section 212.02(13), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may preempt certain local regulations outside the scope of its legislative intent, such as health and safety regulations related to the use of glassware on public beaches.[30]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.703, 403.7033, and 403.707.

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.

[30] For example, the Jacksonville Code of Ordinances s. 28-720(a) provides "It shall be unlawful for any person to bring, or to have in his or her possession, any glass bottle or glass container, in any park, beach, dock, marina or other recreational facility."

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 34 - 109

and insert:

(7) ~~(6)~~ "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or

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from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to be classified as other than construction and demolition debris. The term also includes:

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;

(b) Except as provided in s. 403.707(10)(j) ~~s. 403.707(9)(j)~~, yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects;

(c) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and

(d) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

(8) ~~(7)~~ "County," or any like term, means a political subdivision of the state established pursuant to s. 1, Art. VIII

of the State Constitution and, when s. 403.706(20) ~~s. 403.706(19)~~ applies, means a special district or other entity.

(22) ~~(21)~~ "Municipality," or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution and, when s. 403.706(20) ~~s. 403.706(19)~~ applies, means a special district or other entity.

(36) ~~(35)~~ "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (29) ~~(28)~~ and post-use polymers as defined in subsection (25) ~~(24)~~ are not solid waste.

Section 2. Section 403.7033, Florida Statutes, is amended to read:

403.7033 Preemption of regulation for auxiliary containers ~~Departmental analysis of particular recyclable materials. The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall review and update its 2010 report on retail bags analyzing the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The updated report must include input from state and local~~

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~~government agencies, stakeholders, private businesses, and citizens and must evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure consistent and effective implementation, the department shall submit the updated report with conclusions and recommendations to the Legislature no later than December 31, 2021. Until such time that the Legislature adopts the recommendations of the department,~~ A local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of ~~such~~ auxiliary containers. The regulation of auxiliary containers is expressly preempted to the state~~, wrappings, or disposable plastic bags~~.

Section 3. Present subsections (2) through (23) of section 403.706, Florida Statutes, are redesignated as subsections (3) through (24), respectively, a new subsection (2) is added to that section, and present subsections (4), (6), (7), and (20) of that section are amended, to read:

403.706 Local government solid waste responsibilities.—

(2) A local government may not issue a construction permit pursuant to this section for a new solid waste disposal facility that uses an ash-producing incinerator or for a waste-to-energy facility, if the proposed location of such facility is sited within a one mile radius of any school or any property zoned for residential use which has a density of one or more dwelling units per acre. The one-mile radius must be measured from the stack of the facility. This subsection applies only to a county as defined in s. 125.011(1).

(5)(a) ~~(4)(a)~~ In order to promote the production of

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renewable energy from solid waste, each megawatt-hour produced by a renewable energy facility using solid waste as a fuel shall count as 1 ton of recycled material and shall be applied toward meeting the recycling goals set forth in this section. If a county creating renewable energy from solid waste implements and maintains a program to recycle at least 50 percent of municipal solid waste by a means other than creating renewable energy, that county shall count 1.25 tons of recycled material for each megawatt-hour produced. If waste originates from a county other than the county in which the renewable energy facility resides, the originating county shall receive such recycling credit. Any byproduct resulting from the creation of renewable energy that is recycled shall count towards the county recycling goals in accordance with the methods and criteria developed pursuant to paragraph (3)(h) ~~(2)(h)~~.

(b) A county may receive credit for one-half of the recycling goal set forth in subsection (3) ~~(2)~~ from the use of yard trash, or other clean wood waste or paper waste, in innovative programs including, but not limited to, programs that produce alternative clean-burning fuels such as ethanol or that provide for the conversion of yard trash or other clean wood waste or paper waste to clean-burning fuel for the production of energy for use at facilities other than a waste-to-energy facility as defined in s. 403.7061. The provisions of this paragraph apply only if a county can demonstrate that:

1. The county has implemented a yard trash mulching or composting program, and

2. As part of the program, compost and mulch made from yard trash is available to the general public and in use at county-

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owned or maintained and municipally owned or maintained facilities in the county and state agencies operating in the county as required by this section.

(c) A county with a population of 100,000 or less may provide its residents with the opportunity to recycle in lieu of achieving the goal set forth in this section. For the purposes of this section, the "opportunity to recycle" means that the county:

1.a. Provides a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or

b. Provides a system of places within the county for collection of source-separated recyclable materials.

2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(7) ~~(6)~~ The department may reduce or modify the municipal solid waste recycling goal that a county is required to achieve pursuant to subsection (3) ~~(2)~~ if the county demonstrates to the department that:

(a) The achievement of the goal set forth in subsection (3) ~~(2)~~ would have an adverse effect on the financial obligations of a county that are directly related to a waste-to-energy facility owned or operated by or on behalf of the county; and

(b) The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of

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solid waste to ensure the financial viability of the facility.

The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a county's waste-to-energy facility. Nothing in this subsection shall exempt a county from developing and implementing a recycling program pursuant to this act.

(8) ~~(7)~~ In order to assess the progress in meeting the goal set forth in subsection (3) ~~(2)~~, each county shall, by April 1 each year, provide information to the department regarding its annual solid waste management program and recycling activities.

(a) The information submitted to the department by the county must, at a minimum, include:

1. The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;

2. The amount and type of materials from the municipal solid waste stream that were recycled; and

3. The percentage of the population participating in various types of recycling activities instituted.

(b) Beginning with the data for the 2012 calendar year, the department shall by July 1 each year post on its website the recycling rates of each county for the prior calendar year.

(21) ~~(20)~~ In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (3) and (5) is ~~(2) and (4) shall~~ not ~~be~~ eligible for grants from the Solid Waste Management Trust Fund, and the department may notify the Chief Financial Officer

to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state fund, to the extent not pledged to retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (3) and (5) ~~(2) and (4)~~ have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

Section 4. Present subsections (6) through (14) of section 403.707, Florida Statutes, are redesignated as subsections (7) through (15), respectively, a new subsection (6) is added to that section, and paragraph (j) of present subsection (9) of that section is amended, to read:

403.707 Permits.—

(6) The department may not issue a construction permit pursuant to this section for a new solid waste disposal facility that uses an ash-producing incinerator or for a waste-to-energy facility, if the proposed location of such facility is sited within a one mile radius of any school or any property zoned for residential use which has a density of one or more dwelling units per acre. The one-mile radius must be measured from the stack of the facility. This subsection applies only to a county as defined in s. 125.011(1).

(10)~~(9)~~ The department shall establish a separate category for solid waste management facilities that accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue

hardship to such facilities. However, a permitted solid waste disposal unit that receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a hearing prior to April 30, 2008, that some or all of the material described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2007, the county has established an adequate method for the use or recycling of such wood material at an existing or proposed solid waste management facility that is permitted or authorized by the department on June 1, 2007. The county is not required to hold a hearing if the county represents that it previously has held a hearing for such purpose, or if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and that such materials include those materials described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~. The county shall provide written notice of its determination to the department by no later than April 30, 2008; thereafter, the materials

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described in s. 403.703(7) ~~s. 403.703(6)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

Section 5. Subsection (5) of section 403.7049, Florida Statutes, is amended to read:

403.7049 Determination of full cost for solid waste management; local solid waste management fees.—

(5) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of s. 403.706(3) ~~s. 403.706(2)~~, a county or a municipality which owns or operates a solid waste management facility is hereby authorized to charge solid waste disposal fees which may vary based on a number of factors, including, but not limited to, the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal.

Section 6. Paragraph (c) of subsection (2) and subsection (3) of section 403.705, Florida Statutes, are amended to read:

403.705 State solid waste management program.—

(2) The state solid waste management program shall include, at a minimum:

(c) Planning guidelines and technical assistance to counties and municipalities to aid in meeting the municipal solid waste recycling goals established in s. 403.706(3) ~~s. 403.706(2)~~.

(3) The department shall evaluate and report biennially to the President of the Senate and the Speaker of the House of

442264

Representatives on the state's success in meeting the solid waste recycling goal as described in s. 403.706(3) ~~s. 403.706(2)~~.

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

And the title is amended as follows:

Delete lines 2 - 10

and insert:

An act relating to waste management; amending s. 403.703, F.S.; defining the term "auxiliary container"; conforming cross-references; amending s. 403.7033, F.S.; deleting obsolete provisions that provide legislative findings and require the Department of Environmental Protection to review and update a specified report; prohibiting the local regulation of auxiliary containers; preempting such regulation to the state; amending ss. 403.706 and 403.707, F.S.; prohibiting a local government from issuing a construction permit for certain solid waste disposal facilities in certain counties; providing applicability; conforming a provision to changes made by the act; conforming cross-references; amending ss. 403.7049 and 403.705, F.S.; conforming cross-references; providing an effective date.

By Senator Martin

33-01273-25 20251822__

A bill to be entitled

An act relating to regulation of auxiliary containers; amending s. 403.703, F.S.; defining the term "auxiliary container"; amending s. 403.7033, F.S.; removing obsolete provisions requiring the Department of Environmental Protection to review and update a specified report; prohibiting local regulation of auxiliary containers; preempting such regulation to the state; amending s. 403.707, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (48) of section 403.703, Florida Statutes, are redesignated as sections (3) through (49), respectively, a new subsection (2) is added to that section, and present subsection (35) of that section is amended, to read:

403.703 Definitions.—As used in this part, the term:

(2) "Auxiliary container" means a reusable or single-use bag, cup, bottle, can, or other packaging that meets both of the following requirements:

(a) Is made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates.

(b) Is designed for transporting, consuming, or protecting

merchandise, food, or beverages from or at a public food service establishment as defined in s. 509.013(5), a food establishment as defined in s. 500.03(1), or a retailer as defined in s. 212.02(13).

(36) ~~(35)~~ "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (29) ~~(28)~~ and post-use polymers as defined in subsection (25) ~~(24)~~ are not solid waste.

Section 2. Section 403.7033, Florida Statutes, is amended to read:

403.7033 Preemption of regulation for auxiliary containers ~~Departmental analysis of particular recyclable materials. The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall review and update its 2010 report on retail bags analyzing the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The updated report must include input from state and local government agencies, stakeholders, private businesses, and citizens and must evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure~~

~~consistent and effective implementation, the department shall submit the updated report with conclusions and recommendations to the Legislature no later than December 31, 2021. Until such time that the Legislature adopts the recommendations of the department,~~ A local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of ~~such~~ auxiliary containers. The regulation of auxiliary containers is expressly preempted to the state~~, wrappings, or disposable plastic bags~~.

Section 3. Paragraph (j) of subsection (9) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(9) The department shall establish a separate category for solid waste management facilities that accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a hearing prior to April 30, 2008, that some or all of the

material described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2007, the county has established an adequate method for the use or recycling of such wood material at an existing or proposed solid waste management facility that is permitted or authorized by the department on June 1, 2007. The county is not required to hold a hearing if the county represents that it previously has held a hearing for such purpose, or if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and that such materials include those materials described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~. The county shall provide written notice of its determination to the department by no later than April 30, 2008; thereafter, the materials described in s. 403.703(7) ~~s. 403.703(6)~~ shall be excluded from the definition of "construction and demolition debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

Section 4. This act shall take effect July 1, 2025.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Chair*
Appropriations Committee on Criminal and Civil Justice, *Chair*
Appropriations
Appropriations Committee on Transportation, Tourism, and Economic Development
Banking and Insurance
Rules
Transportation

SENATOR JONATHAN MARTIN
33rd District

March 18, 2025

Chair Stan McClain,
Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1822 Regulation of Auxiliary Containers

Dear Chair McClain,

Please allow this letter to serve as my respectful request to place SB 1822 Regulation of Auxiliary Containers on the next committee agenda.

SB 1822 removes obsolete provisions requiring the Department of Environmental Protection to review and update a specified report. It also prohibits local regulation of auxiliary containers; preempting such regulation to the state.

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

Sincerely,

Jonathan Martin
Senate District 33

REPLY TO:
❒ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
❒ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

BEN ALBRITTON
President of the Senate

JASON BRODEUR
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 482
INTRODUCER:	Senator DiCeglie
SUBJECT:	Local Government
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Pre-meeting**
2.			FT	
3.			RC	

I. Summary:

SB 482 provides that a county or municipality may not require an applicant to install, pay a fee for, or reimburse the costs of a work of art as a condition of processing or issuing a development permit or order.

The bill provides a definition of "extraordinary circumstance" for the purposes of raising impact fees beyond the statutorily prescribed percentage. The bill's definition is based on a twenty five percent increase in local permanent population estimates.

The bill takes effect July 1, 2025.

II. Present Situation:

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.[1]

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.[2] Local governments are encouraged to use innovative land development regulations[3] and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.[4] Land development

[1] Section 163.3164, F.S.
[2] Section 163.3202, F.S.
[3] Section 163.3202(3), F.S.
[4] Sections 125.01055 and 166.04151, F.S.

regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.[5]

Local Government Preemption

The Florida Constitution grants local governments home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[6] Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.[7] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[8] A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.[9]

Public Art Requirements

Some local governments require that developments of a certain size invest in, either through installation or funding, public art. Currently this practice is not regulated by state law. As an example, the city of West Palm Beach requires that private development exceeding $500,000 in total value either install artwork on the development site valued in an amount not less than one percent of the total construction costs, or make a contribution equaling 0.75 percent of construction costs to the local government's public art account.[10]

Local Government Impact Fees

In Florida, impact fees are imposed pursuant to local legislation and are generally charged as a condition for the issuance of a project's building permit. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.[11] Impact fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.[12] In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, in that the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and

[5] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[6] FLA. CONST. art. VIII, s. 1(f).
[7] FLA. CONST. art. VIII, s. 1(g).
[8] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[9] *See* James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, Fla. B.J. 92 (June 2009) *available at* https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Mar. 24, 2025).
[10] West Palm Beach, Florida, Code of Ordinances Section 78-129 – Public art assessment for private development.
[11] *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).
[12] *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); s. 163.31801(2), F.S.

- The expenditure of the funds collected and the benefits accruing to the new residential or nonresidential construction.[13]

Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Impact Fee Increases

Section 163.31801(6), F.S., provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees as follows:

- An impact fee increase of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
- If the increase in rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal annual installments.
- No impact fee increase may exceed 50 percent of the current impact fee rate.
- An impact fee may not be increased more than once every four years.
- An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

A local government, school district, or special district may increase an impact fee rate beyond these phase-in limitations if a local government, school district, or special district:

- Completes, within the 12-month period before the adoption of the impact fee increase, a demonstrated-need study justifying the increase and expressly demonstrating the *extraordinary circumstances* necessitating the need to exceed the limitations;
- Holds at least two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the limitations; and
- Approves the impact fee increase ordinance by at least a two-thirds vote of the governing body.

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.022 and 166.033, F.S., to provide that a county or municipality, respectively, may not require an applicant to install, pay a fee for, or reimburse the costs of a work of art as a condition of processing or issuing a development permit or order.

Section 2 amends s. 163.31801, F.S., to provide a definition of "extraordinary circumstance" for the purposes of raising impact fees beyond the statutorily prescribed percentage.

- For a county, an extraordinary circumstance is when the permanent population estimate determined for the county by the University of Florida Bureau of Economic and Business Research is at least 1.25 times the 5-year high-series population projection for the county as published immediately before the year of the population estimate.

[13] *See St. Johns County* at 637. Codified at s. 163.31801(3)(f) and (g), F.S.

- For a municipality, an extraordinary circumstance is when the municipality is located within a county experiencing extraordinary circumstances as above, and the municipality demonstrates that it has maintained a proportionate share of population growth over the preceding 5 years.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes:125.022, 163.31801, and 166.033.

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 DiCeglie

18-01476-25 2025482__

A bill to be entitled

An act relating to local government; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to take certain actions as a condition of processing a development permit or development order; amending s. 163.31801, F.S.; defining the term "extraordinary circumstances"; requiring that a demonstrated-need study include certain information; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to take certain actions as a condition of processing a development permit or development order; providing an effective date.

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

Section 1. Subsection (8) is added to section 125.022, Florida Statutes, to read:

125.022 Development permits and orders.—

(8) A county may not as a condition of processing or issuing a development permit or development order require an applicant to install a work of art, pay a fee for a work of art, or reimburse the county for any costs that the county may incur related to a work of art.

Section 2. Present paragraphs (a) and (b) of subsection (3) of section 163.31801, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added to that subsection, and paragraph (g) of subsection (6) of that section is amended, to read:

163.31801 Impact fees; short title; intent; minimum

requirements; audits; challenges.—

(3) For purposes of this section, the term:

(a) "Extraordinary circumstances" means:

1. For a county, that the permanent population estimate determined for the county by the University of Florida Bureau of Economic and Business Research is at least 1.25 times the 5-year high-series population projection for the county as published by the University of Florida Bureau of Economic and Business Research immediately before the year of the population estimate; or

2. For a municipality, that the municipality is located within a county with such a permanent population estimate and the municipality demonstrates that it has maintained a proportionate share of the county's population growth during the preceding 5-year period.

(6) A local government, school district, or special district may increase an impact fee only as provided in this subsection.

(g) A local government, school district, or special district may increase an impact fee rate beyond the phase-in limitations established under paragraph (b), paragraph (c), paragraph (d), or paragraph (e) by establishing the need for such increase in full compliance with the requirements of subsection (4), provided the following criteria are met:

1. A demonstrated-need study justifying any increase in excess of those authorized in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) has been completed within the 12 months before the adoption of the impact fee increase and expressly demonstrates the extraordinary circumstances

necessitating the need to exceed the phase-in limitations. The demonstrated-need study must identify the specific projects that will benefit, and how such projects will benefit, from exceeding the phase-in limitations.

2. The local government jurisdiction has held not less than two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations set forth in paragraph (b), paragraph (c), paragraph (d), or paragraph (e).

3. The impact fee increase ordinance is approved by at least a two-thirds vote of the governing body.

Section 3. Subsection (8) is added to section 166.033, Florida Statutes, to read:

166.033 Development permits and orders.—

(8) A municipality may not as a condition of processing or issuing a development permit or development order require an applicant to install a work of art, pay a fee for a work of art, or reimburse the municipality for any costs that the municipality may incur related to a work of art.

Section 4. This act shall take effect July 1, 2025.

THE FLORIDA SENATE
SENATOR NICK DICEGLIE
District 18

Ben Albritton
President of the Senate

Jason Brodeur
President Pro Tempore

March 6, 2025

Dear Chair McClain,

I respectfully request that **SB 482: Local Government** be placed on the agenda of the Committee on Community Affairs at your earliest convenience. If my office can be of any assistance to the committee, please do not hesitate to contact me at DiCeglie.Nick@flsenate.gov or (850) 487-5018. Thank you for your consideration.

Sincerely,

Nick DiCeglie

State Senator, District 18

Proudly Serving Pinellas County

Appropriations Committee on Transportation, Tourism, and Economic Development, Chair ~ Governmental Oversight and Accountability, Vice Chair ~ Appropriations ~ Appropriations Committee on Agriculture, Environment, and General Government ~ Commerce and Tourism ~ Environment and Natural Resources ~ Judiciary ~ Rules ~ Joint Select Committee on Collective Bargaining