

Tab 1	SB 556 by Altman ; (Compare to CS/H 0371) Florida Commission on Poverty						
Tab 2	SB 612 by Hays ; (Identical to H 4009) Slungshot						
Tab 3	CS/SB 938 by HP, Benacquisto ; (Similar to CS/CS/H 0691) Retail Sale of Dextromethorphan						
721242	A	S	RCS	CM, Bean	Delete L.40:	02/16 12:47 PM	
526230	A	S	RCS	CM, Bean	Delete L.53 - 66:	02/16 12:47 PM	
Tab 4	CS/SB 1036 by BI, Brandes ; (Similar to CS/H 0659) Automobile Insurance						
807944	A	S L	RCS	CM, Latvala	Delete L.274 - 373.	02/16 11:31 AM	
Tab 5	SB 1216 by Stargel ; (Similar to CS/H 1017) Reemployment Assistance Fraud						
886940	A	S	RCS	CM, Bean	Delete L.52 - 155:	02/16 11:33 AM	
Tab 6	SM 600 by Thompson ; (Identical to H 0333) Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month						
Tab 7	CS/SB 1156 by CA, Hutson ; (Similar to CS/H 0971) Community Development Districts						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Thompson, Vice Chair

MEETING DATE: Tuesday, February 16, 2016
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Hutson, Latvala, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 556 Altman (Compare CS/H 371)	Florida Commission on Poverty; Creating the commission within the Department of Economic Opportunity; specifying the membership of the commission and the duration of members' terms; authorizing reimbursement for per diem and travel expenses; prescribing the powers and duties of the commission; requiring the commission to annually submit a report to the Governor and the Legislature, etc. CM 02/16/2016 Favorable ATD FP	Favorable Yeas 6 Nays 0
2	SB 612 Hays (Identical H 4009)	Slungshot; Revising the definition of the term "concealed weapon" to delete its inclusion of a slungshot; deleting provisions prohibiting the manufacture or sale of any instrument or weapon usually known as a slungshot; deleting a provision prohibiting a dealer in arms from selling or transferring a slungshot to a minor, etc. CJ 02/01/2016 Favorable CM 02/16/2016 Favorable RC	Favorable Yeas 5 Nays 0
3	CS/SB 938 Health Policy / Benacquisto (Similar CS/CS/H 691)	Retail Sale of Dextromethorphan; Prohibiting a manufacturer, distributor, or retailer, or its employees and representatives, from knowingly or willfully selling a finished drug product containing dextromethorphan to a person younger than 18 years of age; prohibiting a person 18 years of age or younger from purchasing a finished drug product containing dextromethorphan, etc. HP 01/19/2016 Fav/CS CM 02/16/2016 Fav/CS FP	Fav/CS Yeas 4 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 16, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1036 Banking and Insurance / Brandes (Similar CS/H 659)	Automobile Insurance; Authorizing the Florida Automobile Joint Underwriting Association and a joint underwriting plan approved by the Office of Insurance Regulation to cancel personal lines or commercial policies within a specified time for nonpayment of premium due to certain reasons; authorizing an insurer to opt out of the preinsurance inspection of private passenger motor vehicles and to establish its own preinsurance inspection program if it files a certain manual rule with the office, etc. BI 01/26/2016 Fav/CS CM 02/16/2016 Fav/CS RC	Fav/CS Yeas 7 Nays 0
5	SB 1216 Stargel (Similar CS/H 1017)	Reemployment Assistance Fraud; Citing this act as the "Department of Economic Opportunity Cybercrime Prevention Act"; authorizing the Department of Economic Opportunity to employ law enforcement officers to investigate violations of ch. 443, F.S.; providing for disqualification from eligibility for reemployment benefits for a specified period of time determined by the number of incidents of false or fraudulent representation and date of repayment of certain overpayments, etc. CM 02/16/2016 Fav/CS ATD AP	Fav/CS Yeas 7 Nays 0
6	SM 600 Thompson (Identical HM 333, Compare CS/HM 69, SM 568)	Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month; Urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month", etc. CM 02/16/2016 Favorable RC	Favorable Yeas 5 Nays 0
7	CS/SB 1156 Community Affairs / Hutson (Similar CS/H 971)	Community Development Districts; Increasing minimum and maximum size requirements for the establishment of community development districts under certain circumstances; revising requirements related to the process of amending community development district boundaries; authorizing up to a certain number of districts to merge into one surviving district, subject to certain requirements, etc. CA 01/19/2016 Fav/CS CM 02/16/2016 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 16, 2016, 10:00 a.m.—12:00 noon

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Executive Director, Department of Economic Opportunity			
8	Proctor, Theresa "Cissy" (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 556

INTRODUCER: Senator Altman

SUBJECT: Florida Commission on Poverty

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	Favorable
2.			ATD	
3.			FP	

I. Summary:

SB 556 establishes the Florida Commission on Poverty (commission), assigned to the Department of Economic Opportunity, to serve as an advisory board to the Governor and Cabinet, the Legislature, and appropriate state agencies and entities on matters relating to poverty. The commission must conduct a study and develop strategies to address the causes of poverty in Florida, and may procure information and assistance, contract for necessary goods and services, and apply for and accept funds, grants, gifts, and services.

The bill provides for appointment of five voting members and any number of non-voting members to the commission, requires the voting members to be confirmed by the Senate, and provides that members serve 4-year terms. Commission members serve without compensation, but voting members are entitled to reimbursement for per diem and travel expenses.

The commission must submit an annual report to the Governor, President of the Senate, and the Speaker of the House of Representatives. The report must contain an accounting of the commission's activities, and any recommendations by the commission for legislative, administrative, or regulatory reforms for the purpose of mitigating poverty in Florida.

II. Present Situation:

Poverty

The United States Census Bureau (bureau) tracks income and poverty in the United States. The bureau estimates that in 2014 there were 46.7 million Americans living in poverty, which equates to 14.8 percent of the country's population.¹ As of 2014, Florida had approximately 3.2 million

¹ U.S. Census Bureau, Current Population Reports, P60-252, *Income and Poverty in the United States: 2014*, p. 12, available at <http://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf> (last visited Feb. 10, 2016).

persons living below the poverty line, with a poverty rate of 16.6 percent, and of Florida's 67 counties, 48 had poverty rates exceeding the national average.²

In order to reduce the number of persons in poverty, some states have created statewide anti-poverty initiatives. The following are examples of such initiatives:

- The Legislative Commission to End Poverty in Minnesota by 2020 was created in 2006 to develop guidelines to end poverty and prepare recommendations on how to do so.³
- The Speaker of the House of Representatives for Alabama created a poverty task force in September 2007 to identify and assess conditions that create or worsen poverty throughout Alabama and to develop and propose policy initiatives to reduce or eliminate those conditions.⁴
- The Illinois Commission on the Elimination of Poverty was established in 2008 to address poverty in Illinois consistent with international human rights standards, with an initial goal to reduce extreme poverty in Illinois by 50 percent or more by 2015.⁵
- The Child Poverty Prevention Council for Louisiana was created in 2008 to pursue programs to reduce child poverty in the state by 50 percent over the following decade.⁶
- The Connecticut Legislature created a Child Poverty Council in 2004 to develop a 10-year plan to reduce the number of children living in poverty in Connecticut by 50 percent.⁷
- The Rhode Island Legislature created a legislative commission on family income and asset building in 2007 to conduct a comprehensive review of Rhode Island laws, policies, and activities that benefit those in poverty.⁸

Advisory Bodies

Section 20.052, F.S., provides that an advisory body, commission, or board created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements.

Such an advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose,⁹ and it must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of the public purpose.¹⁰ An advisory body may not be created unless:

- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members are appointed for 4-year staggered terms; and

² United States Department of Agriculture, Economic Research Service, County-level Poverty Data Sets, available at <http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx> (last visited Feb. 10, 2016).

³ Minnesota Laws 2006, ch. 282, part. 2, s. 27.

⁴ Alabama House of Representatives, Poverty Task Force, Final Report (2008) available at <http://www.clasp.org/documents/PTF-Final-Report.pdf> (last visited Jan. 5, 2016).

⁵ 20 ILL. COMP. STAT. 4080/10 (2008).

⁶ LA, REV. STAT. ANN. s. 46:2801 (2008).

⁷ CONN. GEN. STAT. s. 4-67x (2004).

⁸ 2007 RI H 6561 (2007).

⁹ Section 20.052(1), F.S.

¹⁰ Section 20.052(2), F.S.

- Its members serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses.¹¹

The private citizen members of an *advisory body* that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer. The private citizen members of a *commission or board* that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of Section 5(a), Article II of the Florida Constitution.¹²

III. Effect of Proposed Changes:

The bill establishes the Florida Commission on Poverty (commission) and assigns it to the Department of Economic Opportunity (DEO), which must presumably provide administrative assistance to the commission. The commission serves as an advisory board to the Governor and Cabinet, the Legislature, and appropriate state agencies and entities on matters relating to poverty.

The commission consists of five voting members who must be confirmed by the Senate and who are appointed in the following manner:

- The Governor appoints one voting member;
- The Chief Financial Officer appoints one voting member;
- The President of the Senate appoints one voting member;
- The Speaker of the House of Representatives appoints one voting member; and
- The Florida Association for Community Action, Inc. appoints one voting member.

In addition, the Governor may appoint any number of nonvoting members to the commission who may concurrently hold public office with his or her term of service. All members of the commission must be Florida residents.

Commission members are appointed for 4-year terms, and may be reappointed for successive terms. A vacancy is filled for the remainder of the unexpired term in the same manner as the original appointment. The bill does not provide for staggered terms.

Members of the commission serve without compensation, but voting members are entitled to reimbursement for per diem and travel expenses. The commission must annually elect a chair, who must be a voting member, and a vice chair.

The commission must meet at least twice each year at the call of the chair or at the request of a majority of the commission's total voting membership. A majority of the total voting membership constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.

¹¹ Section 20.052(4), F.S.

¹² Section 20.052(5), F.S.

The commission must conduct a study and develop strategies to address the causes of poverty in Florida, and to solicit the participation of counties in the study. A county that wishes to participate must submit an application to the commission that outlines current issues relating to poverty in that county. The commission must develop procedures to approve or deny applications for participation.

The bill authorizes the commission to:

- Procure information and assistance from the state or any political subdivision, municipality, public officer, or governmental department or agency thereof;
- Contract for the necessary goods and services; and
- Apply for and accept funds, grants, gifts, and services from any local government, state government, or the Federal Government, or an agency thereof, or any other public or private source for the purpose of defraying clerical and administrative costs as may be necessary to carry out its duties.

By January 15 of each year, the bill requires the commission to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that provides an accounting of its activities and recommendations for legislative, administrative, and regulatory reforms to facilitate efforts in mitigating the existence of poverty in Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, section 5(a), of the Florida Constitution, provides in relevant part that “[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that . . . any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.” The exception to the prohibition on dual office-holding for statutory bodies that have only advisory powers would appear to apply to officers appointed to the commission created by the bill.

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

None.

B. Private Sector Impact:

The bill authorizes the commission to accept funds, grants, gifts, and services from any private source for the purpose of defraying clerical and administrative costs.

C. Government Sector Impact:

The bill authorizes voting members of the council to receive per diem and travel expenses in accordance with s. 112.061, F.S. Those expenses appear to be the responsibility of the DEO.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 20, F.S., defines the term “commission” to mean a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor, and *exercising limited quasi-legislative or quasi-judicial powers or both*, independently of the head of the department or the Governor.¹³ Chapter 20, F.S., defines the term “council” to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.¹⁴ Though the bill establishes the Florida *Commission* on Poverty, it is established as an advisory board. It therefore appears as though the entity created is a council, instead of a commission, and the bill could be clarified accordingly.

The requirement that commission members be appointed for 4-year terms appears to apply to both voting and nonvoting members. If the intent is otherwise, the bill should be so clarified.

It is unclear whether the vice chair has to be a voting member of the commission.

The bill does not specify standards for the commission to use in evaluating county applications for participation in the commission study.

The bill allows the commission, which is an advisory body, to contract for goods and services, and accept funds. It is unclear why an advisory body would need to undertake those activities.

¹³ Section 20.03(10), F.S.

¹⁴ Section 20.03(7), F.S.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Altman

16-00283A-16

2016556__

A bill to be entitled

An act relating to the Florida Commission on Poverty; creating the commission within the Department of Economic Opportunity; specifying the membership of the commission and the duration of members' terms; authorizing reimbursement for per diem and travel expenses; prescribing the powers and duties of the commission; requiring the commission to annually submit a report to the Governor and the Legislature; providing an effective date.

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

Section 1. Florida Commission on Poverty.—

(1) The Florida Commission on Poverty is established and assigned to the Department of Economic Opportunity. The commission shall serve as an advisory board to the Governor and Cabinet, the Legislature, and appropriate state agencies and entities on matters relating to poverty.

(2) The commission shall consist of one voting member appointed by the Governor, one voting member appointed by the Chief Financial Officer, one voting member appointed by the President of the Senate, one voting member appointed by the Speaker of the House of Representatives, and one voting member from the Florida Association for Community Action, Inc. All appointees must be confirmed by the Senate. The Governor may additionally appoint any number of nonvoting members who may concurrently hold public office with his or her term of service. Members of the commission must be residents of this state.

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16-00283A-16

2016556__

(3) Members of the commission shall be appointed for 4-year terms and may be reappointed for successive terms. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) The commission shall meet at least twice each year at the call of the chair or at the request of a majority of its total voting membership. A majority of the total voting membership constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.

(5) Members of the commission shall serve without compensation, but voting members are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(6) The commission shall:

(a) Annually elect a chair, who must be a voting member of the commission, and a vice chair.

(b) Conduct a study and develop strategies to address the causes of poverty in the state.

(c) Solicit the participation of counties in the study. A county that wishes to participate must submit an application to the commission that outlines current issues relating to poverty in that county. The commission shall develop procedures to approve or deny applications for participation.

(7) The commission may:

(a) Procure information and assistance from the state or any political subdivision, municipality, public officer, or governmental department or agency thereof.

(b) Contract for necessary goods and services.

(c) Apply for and accept funds, grants, gifts, and services

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2016556__

59 from any local government, state government, or the Federal
60 Government, or an agency thereof, or any other public or private
61 source for the purpose of defraying clerical and administrative
62 costs as may be necessary to carry out its duties under this
63 section.

64 (8) By January 15 of each year, the commission shall submit
65 an annual report to the Governor, the President of the Senate,
66 and the Speaker of the House of Representatives containing an
67 accounting of its activities and recommendations for
68 legislative, administrative, and regulatory reforms to
69 facilitate efforts in mitigating the existence of poverty in
70 this state.

71 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

October 26, 2015

The Honorable Nancy Detert
Senate Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Detert,

I respectfully request that SB 556, related to the *Florida Commission on Poverty*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

CC: Todd McKay, Staff Director, 310 Knott Building
Patty Blackburn, Committee Administrative Assistant

TA/dw

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

February 16, 2016

The Honorable Nancy Detert
Senate Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madame Chair Detert,

Senate Bill 556, related to *the Poverty Commission* is on the Commerce and Tourism agenda today, February 16, 2016. I am unfortunately unable to attend this meeting to present the bill due to unforeseen circumstances.

I respectfully request that you recognize my Legislative Aide, Lindy Smith, to present SB 556 on my behalf. Contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

CC: Todd McKay, Staff Director, 310 Knott Building
Patty Blackburn, Committee Administrative Assistant

TA/dw

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 612

INTRODUCER: Senator Hays

SUBJECT: Slungshot

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 612 repeals references to “slungshot” in ch. 790, F.S. By making these changes, the bill:

- Allows persons to carry a slungshot in a concealed manner;
- Allows slungshots to be manufactured, displayed for sale, and sold; and
- Allows a dealer in arms to sell or transfer a slungshot to a minor.

“Slungshot” is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.

II. Present Situation:

“Slungshot” is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. The term “slungshot” is contained within the definition of what can be considered a concealed weapon under current law.¹ It is a second degree misdemeanor to manufacture a slungshot or cause one to be manufactured, or to sell a slungshot or expose one for sale.² It is a second degree felony for any dealer in arms to sell or transfer a slungshot to a minor.³

The slungshot often consists of a weight affixed to the end of a long cord by being wound into the center of a knot called a monkey’s fist.⁴ Although the slungshot is a maritime tool, it became an improvised and very effective weapon, widely used by street gangs in the 19th century.⁵ Survivalists have embraced the slungshot as both a tool and a weapon.

¹ Section 790.001(3)(a), F.S.

² Section 790.09, F.S.

³ Section 790.18, F.S.

⁴ See generally, Wikipedia slungshot website. Available at: <https://en.wikipedia.org/wiki/Slungshot>, (last visited February 11, 2016).

⁵ *Id.*; see also <http://www.wisegeek.com/what-is-a-slungshot.htm>, (last visited February 11, 2016).

III. Effect of Proposed Changes:

The bill repeals references to “slungshot” in ch. 790, F.S. The slungshot may be manufactured, displayed for sale, sold, and carried in a concealed manner under the provisions of the bill. The bill will also allow a dealer in arms to sell or transfer a slungshot to a minor.

The bill makes conforming changes in s. 790.09, F.S., to reflect that the section applies only to metallic knuckles.

The bill is effective upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate, but positive.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services reports that the bill has no impact on the department.⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶ Department of Agriculture and Consumer Services, *Senate Bill #612: Relating to Slungshot*, October 26, 2015, (on file with the Committee on Commerce and Tourism).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.001, 790.09, and 790.18.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

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

By Senator Hays

11-00078-16

2016612__

1 A bill to be entitled
 2 An act relating to the slungshot; amending s. 790.001,
 3 F.S.; revising the definition of the term "concealed
 4 weapon" to delete its inclusion of a slungshot;
 5 amending s. 790.09, F.S.; deleting provisions
 6 prohibiting the manufacture or sale of any instrument
 7 or weapon usually known as a slungshot; amending s.
 8 790.18, F.S.; deleting a provision prohibiting a
 9 dealer in arms from selling or transferring a
 10 slungshot to a minor; providing an effective date.

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

12 Section 1. Paragraph (a) of subsection (3) of section
 13 790.001, Florida Statutes, is amended to read:

14 790.001 Definitions.—As used in this chapter, except where
 15 the context otherwise requires:

16 (3) (a) "Concealed weapon" means any dirk, metallic
 17 knuckles, ~~slungshot~~, billie, tear gas gun, chemical weapon or
 18 device, or other deadly weapon carried on or about a person in
 19 such a manner as to conceal the weapon from the ordinary sight
 20 of another person.

21 Section 2. Section 790.09, Florida Statutes, is amended to
 22 read:

23 790.09 Manufacturing or selling metallic knuckles
 24 ~~slungshot~~.—Whoever manufactures or causes to be manufactured, or
 25 sells or exposes for sale any instrument or weapon of the kind
 26 usually known as ~~slungshot~~, or metallic knuckles commits, ~~shall~~
 27 ~~be guilty of~~ a misdemeanor of the second degree, punishable as

Page 1 of 2

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11-00078-16

2016612__

30 provided in s. 775.082 or s. 775.083.

31 Section 3. Section 790.18, Florida Statutes, is amended to
 32 read:

33 790.18 Sale or transfer of arms to minors by dealers.—It is
 34 unlawful for any dealer in arms to sell or transfer to a minor
 35 any firearm, pistol, Springfield rifle or other repeating rifle,
 36 bowie knife or dirk knife, brass knuckles, ~~slungshot~~, or
 37 electric weapon or device. A person who violates this section
 38 commits a felony of the second degree, punishable as provided in
 39 s. 775.082, s. 775.083, or s. 775.084.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General
Government, *Chair*
Governmental Oversight and Accountability,
Vice Chair
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining,
Alternating Chair

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism
CC: Todd McKay, Staff Director
Patty Blackburn, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 612- Slungshot

Date: February 1, 2016

The above referenced bill passed through Committee on Criminal Justice this afternoon. In the interest of keeping the bill moving forward, I am asking that you please consider adding it to your next agenda "if received." If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,



D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/CS/SB 938

INTRODUCER: Commerce and Tourism Committee; Health Policy Committee; and Senator Benacquisto

SUBJECT: Retail Sale of Dextromethorphan

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 938 regulates dextromethorphan (DXM), an antitussive medicine, most commonly used as a cough suppressant. The bill prohibits any manufacturer, distributor, or retailer, and their employees and representatives, from knowingly or willfully selling a finished drug product that contains DXM to an individual under the age of 18 without a valid prescription. The bill requires individuals presumed to be less than 25 years of age to provide proof of age prior to purchasing a finished drug product that contains any quantity of DXM.

The bill also sets forth uniform procedures for local law enforcement officers and other officials responsible for enforcing the law. An individual who possesses or receives a finished product containing any quantity of DXM in violation of the act with the intent to distribute is subject to a civil citation of up to \$100 for each violation. An employee or representative who sells a finished drug product containing DXM in violation of the act is subject to a written warning. A manufacturer, distributor, or retailer found to be in violation of the act may be subject to a civil citation, and a fine of up to \$100 per violation. However, a citation may be avoided upon the showing of a good faith effort to comply with the bill's requirements.

The bill has an indeterminate fiscal impact and provides an effective date of January 1, 2017.

II. Present Situation:

Dextromethorphan (DXM) is an antitussive medicine, most commonly used as a cough suppressant.¹ DXM was first approved by the Food and Drug Administration (FDA) in 1958 as a safe and effective ingredient found in many over-the-counter (OTC) cough and cold remedies.² Today, DXM is in almost half of all OTC drugs sold in the United States.³

More than 125 OTC products contain DXM either alone or in combination with other drugs such as analgesics (for example: acetaminophen), antihistamines, decongestants, and/or expectorants.⁴ A total of 10.7 million DXM medications were dispensed in 2013.⁵ DXM can be found in the form of cough syrup, tablets, capsules or powder. It is available without a prescription and sold under popular brand names such as Robitussin, Pediacare, Coricidin, and Vicks 44. When taken as directed, side-effects from DXM are rarely observed.⁶ However, when taken in large doses in combination with alcohol or other drugs, it may cause serious adverse health effects, including death.⁷

In response to growing reports of teenagers dying from the illicit use of DXM, the FDA issued a warning about its dangers in 2005.⁸ The federal Drug Enforcement Agency (DEA) reports that the most commonly abused products containing DXM are Robitussin and Coricidin.⁹ Illicit use of these drugs is also known as “Robo-tripping” or “skittling.”¹⁰ Cough medicine abuse seems to be most popular among teens and younger children as cough medicine is often cheap, easy to get, and legal.

Side effects of DXM intoxication include:

- Over-excitability;
- Lethargy;
- Loss of coordination;
- Slurred speech;
- Sweating;
- Hypertension; and
- Involuntary spasmodic movement of the eyeballs.¹¹

¹ U.S. Food and Drug Administration, *Dextromethorphan Talk Paper* (May 20, 2005), <http://www.fda.gov/downloads/advisorycommittees/drugs/ucm224446.pdf> (last visited Feb. 8, 2016).

² *Id.*

³ WebMD, *Teen Abuse of Cough and Cold Medicine*, <http://www.webmd.com/parenting/teen-abuse-cough-medicine-9/teens-and-dxm-drug-abuse> (last visited Feb. 8, 2016).

⁴ Drug Enforcement Administration, *Dextromethorphan* (March 2014), http://www.deadiversion.usdoj.gov/drug_chem_info/dextro_m.pdf (last visited Feb. 8, 2016).

⁵ *Id.*

⁶ Drug Enforcement Administration, *Drug Fact Sheet Dextromethorphan*, http://www.dea.gov/druginfo/drug_data_sheets/Detromethorphan.pdf (last visited Feb. 10, 2016).

⁷ *Supra*, note 4.

⁸ *Supra*, note 1.

⁹ *Supra*, note 4.

¹⁰ *Id.*

¹¹ *Supra*, note 6.

The side effects of DXM can be worsened if combined with alcohol or other drugs. The American Association of Poison Control Centers reported 45,748 case mentions, 33,811 single exposures, and six deaths related to DXM as of the March 2014 DEA update.¹²

DXM is not a controlled substance nor a regulated chemical under the Controlled Substances Act (CSA). The CSA is a federal statute¹³ that prescribes and regulates the United States' drug policy which includes the manufacture, importations, possession, use, and distribution of certain substances. Federal law provides five schedules of controlled substances, known as Schedules I, II, III, IV, and V. The placement of a substance under a specific schedule is made based on a number of criteria for the drug or substance:

- Potential for abuse;
- Accepted medical use in treatment in the United States;
- Safety for use of the drug or substance; and
- Abuse of the drug or substance which leads to psychological or physical dependence.¹⁴

In Congress, the DXM Abuse Prevention Act of 2015 (H.R. 3250) was introduced in July 2015 to specifically address DXM issues.¹⁵ The legislation would:

- Restrict its sale to individuals at least 18 years of age, except those with a valid prescription or on active military duty;
- Require retailers to verify individuals are at least 18 years of age and to implement an electronic, point of sale verification system;
- Provide affirmative defenses to retailers who check identifications and reasonably conclude the identification is valid and the individual is 18 years of age;
- Create penalties for violations ranging from a warning for a first violation to up to a fine of up to \$5,000 for a fourth or subsequent violation;
- Prohibit possession or receipt of unfinished DXM by any person not registered, licensed, or approved under federal or state law to practice pharmacy, engage in pharmaceutical production, or manufacture or distribute drug ingredients;
- Prohibit the distribution of unfinished DXM to unregistered or unlicensed persons; and
- Establish a civil penalty of up to \$100,000 for the unfinished DXM possession, receipt, and distribution violations.

The legislation has not been heard in committee.

III. Effect of Proposed Changes:

The bill creates an undesignated section of law to prohibit the sale of OTC products containing DXM to individuals who are under the age of 18. Specifically, the bill prohibits any manufacturer, distributor, or retailer, from knowingly or willfully selling a finished drug product containing DXM to an individual younger than 18 years of age without a valid prescription.

¹² *Id.*

¹³ Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. 18583, 91st Cong. (1970).

¹⁴ 21 U.S.C. § 812 (2014).

¹⁵ DXM Abuse Prevention Act of 2015, HB 3250, 114th Cong. (2016) available at <https://www.congress.gov/bill/114th-congress/house-bill/3250> (last visited Feb. 9, 2016).

The bill provides definitions for:

- “Finished drug product,” which means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act that is in finished dosage form. The term “drug” has the same meaning as provided in s. 499.003(18), F.S.
- “Proof of Age,” which means any document issued by a governmental agency that contains the date of birth and a description or photograph of the person purchasing the finished drug product. The term includes, but is not limited to, a passport, driver license, or a government identification card issued by this state, another state, or any branch of the United States Armed Forces.

Under the bill, an employee or representative of a retailer is required to obtain proof of age from any purchaser prior to sale of a finished drug product containing any quantity of DXM, unless it would be reasonable to presume the purchaser is 25 years of age or older. A person younger than 18 years of age may not purchase a finished drug product containing DXM.

The bill does not impose any restrictions on the placement of products in retail stores, direct access of customers to finished drug products, or the maintenance of transaction records. The bill also does not apply to medication containing DXM sold by a retail entity pursuant to a valid prescription.

Local law enforcement, and other officials charged with enforcement of state laws, are required to enforce the act uniformly throughout the state. The bill preempts any local ordinances regulating the sale, distribution, receipt, or possession of DXM, and DXM is not subject to any further regulation by county, municipality, or other political subdivisions of the state.

Penalties

An employee or representative of a manufacturer, distributor, or retailer, who sells a finished drug product containing any quantity of DXM during the course of his or her employment in violation of the act is subject to a written warning.

The bill also establishes civil penalties for violations of the act. The bill does not create a criminal violation; a person who violates this act commits a noncriminal violation as defined in s. 775.08(3), F.S.¹⁶

Each sales location of a manufacturer, distributor, or retailer whose employees or representatives sell a finished drug product containing any quantity of DXM in violation of this act is subject to a written warning for the initial violation and a civil citation of not more than \$100 for each subsequent violation. Civil citations may accrue and be recovered in a civil action by the local jurisdiction. However, the citation may be waived if the manufacturer, distributor, or retailer demonstrates a good faith effort to comply with the bill’s requirements.

¹⁶ Section 775.08(3), F.S., defines “noncriminal violation” as an offense that is punishable by only a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and a conviction for one these offenses would not give rise to any legal disability based on a criminal offense. Examples of noncriminal offenses include some traffic-related offenses, parking violations or citations for loud-noises.

A person who possesses or receives a finished drug product containing any quantity of DXM in violation of the act with the intent to distribute is subject to a civil citation of up to \$100 for each violation. The amount of the fine imposed is assessed by the local jurisdiction. The bill does not impose consequences on a person who purchases a finished drug product containing any quantity of DXM in violation of the act if no intention to distribute exists.

Civil Citations

The bill requires the following information to be included in any civil citation issued for a violation of the act:

- The date and approximate time of the sale in violation;
- The location of the sale, including the address;
- The name of the employee or representative that completed the sale;
- Information on how to dispute the citation;
- Notice that the citation is a non-criminal violation; and
- How to dispute the notice and what to expect in the dispute process.

The bill also requires a civil citation directed towards a manufacturer, distributor, or retailer, to be delivered to the manager on duty at the time the citation is issued. If a manager is not available, the local law enforcement officer is required to attempt to contact the manager; or, if unsuccessful, the local law enforcement officer may leave a copy with an employee who is 18 years of age or older and mail a copy of the citation by certified mail to the business owner's address, as listed on the Department of State's records.

The bill requires the recipient of the citation to provide notice of any dispute to the clerk of the county court in the jurisdiction where the violation occurred within 15 days of receiving the citation. The local jurisdiction must hold a hearing regarding the citation when:

- a citation for the violation of the bill is issued;
- the violation is disputed; and
- the recipient is issued the citation by a local law enforcement officer employed by or acting on behalf of the jurisdiction.

Effective Date

The bill provides an effective date of January 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Retailers, manufacturers, and distributors would be required to train employees and associates to check the identification of any individuals purchasing finished drug products containing any quantity of DXM who appear to be less than 25 years of age.

Unlawful sales under the act subject retailers, manufacturers, and distributors to a civil citation and fine of up to \$100 for any violation of the act that occurs after an initial violation is found. However, if a manufacturer, distributor, or retailer makes a “good faith effort” to comply with this law, it will not incur a citation for the unlawful sale by an employee or associate.

Individuals who possess or receive finished drug products containing any quantity of DXM in violation of the bill, with the intention to distribute the finished drug product, are subject to a \$100 fine.

C. Government Sector Impact:

The Department of Health has indicated that there would be no fiscal impact to implement the provisions of this act. As the regulator of pharmacies, the department is assumed to have the responsibility of monitoring the manufacturers, retailers, and distributors in their compliance efforts as well as the good faith efforts of their employees and associates.

Local law enforcement agencies will be required to monitor the activities of retailers, manufacturers, and distributors for unlawful sales of finished drug products containing DXM. Written warnings are required for first time offenders and citations for repeat offenders. In those instances when individuals elect to dispute their citations and fines, courts in the county where the citation was issued may incur costs related to holding hearings and disposing of the matter.

Counties, municipalities, and other political subdivisions of the state are preempted from any local regulation over the sale, distribution, possession, or receipt of DXM.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address situations in which an individual younger than 18 years of age may be considered an adult for other purposes. Under the bill emancipated minors and individuals under 18 years of age in active military duty cannot purchase finished drug products containing DXM without a valid prescription.

The bill also does not define the terms manufacturer, retailer, or distributor. Because the bill creates an undesignated section of law, the definition of these terms may be defined by the section of law the bill is designated under.

The bill requires that enforcement of its provisions must be applied uniformly throughout the state by local law enforcement and officials. In order for the laws to be applied uniformly throughout the state, an entity with statewide jurisdiction would need to be given the authority to enforce the bill's requirements.

Lines 58-60 of the bill provide that manufacturers, retailers, or distributors may avoid a citation upon the showing of good faith effort to comply with the bill's requirements. It is unclear by the language of the bill whether the good faith effort to comply should be shown at the time the citation is issued, or at a hearing regarding a disputed citation.

The bill requires a local jurisdiction to hold a hearing in the court of competent jurisdiction, "when a citation for a violation of this section is issued, when the violation is disputed, and when the recipient is issued the citation by a local law enforcement officer employed by or acting on behalf of the jurisdiction." This language could be simplified by providing that a hearing in the court of competent jurisdiction should be held "when a citation is issued by a local law enforcement officer employed by or acting on behalf of the jurisdiction and the recipient of the citation has provided notice of dispute of the citation."

Lines 110-113 of the bill provide that the bill does not impose any restriction on the placement of products in a retail store, direct access of customers to finished drug products, or the maintenance of transaction records. However, the bill does impose restrictions that prohibit individuals under the age of 18 from purchasing finished drug products containing DXM, and the bill also requires individuals presumed to be younger than 25 years of age to show proof of age.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS/CS by Commerce and Tourism on February 16, 2016:

The committee substitute makes technical changes to clarify the bill prohibits the sale of a finished drug product containing any quantity of DXM to an individual younger than the age of 18 years old, without a valid prescription.

CS by Health Policy on January 19, 2016:

The committee substitute:

- Modifies the definitions for “finished drug product” and “proof of age”;
- Subjects each sales location of a manufacturer, distributor, and retailer whose employee or representative sells dextromethorphan (DXM) to someone under age 18 to a violation of this act and provides for a written first warning followed by a civil citation with no more than a \$100 fine for each subsequent violation;
- Provides that fines assessed under this act may accrue and may be recovered in a civil action brought by the local jurisdiction;
- Subjects an employee or representative of a manufacturer, distributor, or retailer who sells DXM in violation of this act to a written warning;
- Subjects a person who possesses or receives DXM with the intent to distribute to a civil citation and fine for each violation which may be recovered in a civil action;
- Describes the contents of a civil citation;
- Provides a process for notification of a written warning or civil citation to the manager on duty;
- Requires uniformity in application across the state, but enforcement remains with local law enforcement departments and officials charged with enforcement of state laws; and
- Clarifies that the bill does not create a criminal violation.

B. Amendments:

None.



721242

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

Senate Amendment

Delete line 40
and insert:
(b) A person younger than 18 years of age may not purchase

a



526230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

Senate Amendment

Delete lines 53 - 66
and insert:
a finished drug product containing any quantity of
dextromethorphan in violation of this section is subject to a
written warning for an initial violation and, for each
subsequent violation, a civil citation imposing a fine of not
more than \$100, which shall accrue and may be recovered in a
civil action brought by the local jurisdiction. A manufacturer,



526230

11 distributor, or retailer who demonstrates a good faith effort to
12 comply with this section is not subject to citation.

13 (b) An employee or representative of a manufacturer,
14 distributor, or retailer who, during the course of the
15 employee's or representative's employment or association with
16 the manufacturer, distributor, or retailer, sells a finished
17 drug product containing any quantity of dextromethorphan in
18 violation of this section is subject to a written warning.

19 (c) A person who possesses or receives a finished drug
20 product containing any quantity of dextromethorphan in

By the Committee on Health Policy; and Senator Benacquisto

588-02318A-16

2016938c1

1 A bill to be entitled
 2 An act relating to the retail sale of
 3 dextromethorphan; providing definitions; prohibiting a
 4 manufacturer, distributor, or retailer, or its
 5 employees and representatives, from knowingly or
 6 willfully selling a finished drug product containing
 7 dextromethorphan to a person younger than 18 years of
 8 age; prohibiting a person 18 years of age or younger
 9 from purchasing a finished drug product containing
 10 dextromethorphan; requiring an employee or
 11 representative of a retailer making a retail sale of a
 12 finished drug product containing any quantity of
 13 dextromethorphan to obtain certain proof of age from
 14 the purchaser; providing an exception; providing
 15 penalties; providing requirements for imposing or
 16 disputing civil citations; specifying information to
 17 be provided in such citations; providing
 18 applicability; preempting local government regulation
 19 of dextromethorphan; providing an effective date.

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

23 Section 1. Restrictions on sale of dextromethorphan.-

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

25 (a) "Finished drug product" means a drug legally marketed
 26 under the Federal Food, Drug, and Cosmetic Act that is in
 27 finished dosage form. For purposes of this paragraph, the term
 28 "drug" has the same meaning as provided in s. 499.003(18).

29 (b) "Proof of age" means any document issued by a
 30 governmental agency that contains the date of birth and a
 31 description or photograph of the person purchasing the finished
 32 drug product. The term includes, but is not limited to, a

Page 1 of 5

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

588-02318A-16

2016938c1

33 passport, a driver license, or an identification card issued by
 34 this state, another state, or any branch of the United States
 35 Armed Forces.

36 (2) (a) A manufacturer, distributor, or retailer, or its
 37 employees and representatives, may not knowingly or willfully
 38 sell a finished drug product containing any quantity of
 39 dextromethorphan to a person younger than 18 years of age.

40 (b) A person 18 years of age or younger may not purchase a
 41 finished drug product containing any quantity of
 42 dextromethorphan.

43 (3) An employee or representative of a retailer making a
 44 retail sale of a finished drug product containing any quantity
 45 of dextromethorphan must require and obtain proof of age from
 46 the purchaser before completing the sale, unless from the
 47 purchaser's outward appearance the person making the sale would
 48 reasonably presume the purchaser to be 25 years of age or older.

49 (4) (a) Each sales location of a manufacturer, distributor,
 50 or retailer whose employee or representative, during the course
 51 of the employee's or representative's employment or association
 52 with the manufacturer, distributor, or retailer, sells
 53 dextromethorphan in violation of this section is subject to a
 54 written warning for an initial violation and, for each
 55 subsequent violation, a civil citation imposing a fine of not
 56 more than \$100, which shall accrue and may be recovered in a
 57 civil action brought by the local jurisdiction. A manufacturer,
 58 distributor, or retailer who demonstrates a good faith effort to
 59 comply with this section is not subject to citation.

60 (b) An employee or representative of a manufacturer,
 61 distributor, or retailer who, during the course of the

Page 2 of 5

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588-02318A-16

2016938c1

62 employee's or representative's employment or association with
 63 the manufacturer, distributor, or retailer, sells
 64 dextromethorphan in violation of this section is subject to a
 65 written warning.

66 (c) A person who possesses or receives dextromethorphan in
 67 violation of this section with the intent to distribute is
 68 subject to a civil citation imposing a fine of not more than
 69 \$100 for each violation, which shall accrue and may be recovered
 70 in a civil action brought by the local jurisdiction. A civil
 71 citation issued to a person pursuant to this paragraph shall
 72 include information regarding how to dispute the citation and
 73 shall clearly state that the violation is a noncriminal
 74 violation.

75 (5) A civil citation issued to a manufacturer, distributor,
 76 or retailer pursuant to this section shall be provided to the
 77 manager on duty at the time the citation is issued. If a manager
 78 is not available, a local law enforcement officer shall attempt
 79 to contact the manager to issue the citation. If the local law
 80 enforcement officer is unsuccessful in contacting the manager,
 81 he or she may leave a copy of the citation with an employee 18
 82 years of age or older and mail a copy of the citation by
 83 certified mail to the owner's business address, as filed with
 84 the Department of State, or he or she may return to issue the
 85 citation at a later time. The civil citation shall provide:

86 (a) The date and approximate time of the sale in violation
 87 of this section.

88 (b) The location of the sale, including the address.

89 (c) The name of the employee or representative that
 90 completed the sale.

588-02318A-16

2016938c1

91 (d) Information regarding how to dispute the citation.

92 (e) Notice that the violation is a noncriminal violation.

93 (6) To dispute the citation, the recipient of the citation
 94 must provide notice of the dispute to the clerk of the county
 95 court in the jurisdiction in which the violation occurred within
 96 15 days after receipt of the citation. The local jurisdiction,
 97 through its duly authorized officers, shall hold a hearing in
 98 the court of competent jurisdiction when a citation for a
 99 violation of this section is issued, when the violation is
 100 disputed, and when the recipient is issued the citation by a
 101 local law enforcement officer employed by or acting on behalf of
 102 the jurisdiction. If the court finds in favor of the
 103 jurisdiction, the court shall require payment of the fine as
 104 provided in this section.

105 (7) This section shall be applied uniformly throughout the
 106 state. Enforcement of this section shall remain with local law
 107 enforcement departments and officials charged with the
 108 enforcement of the laws of the state.

109 (8) This section does not:

110 (a) Impose any restriction on the placement of products in
 111 a retail store, direct access of customers to finished drug
 112 products, or the maintenance of transaction records.

113 (b) Apply to a medication containing dextromethorphan that
 114 is sold by a retailer pursuant to a valid prescription.

115 (c) Create a criminal violation. A person who violates this
 116 section commits a noncriminal violation as defined in s.
 117 775.08(3).

118 (9) This section preempts any ordinance regulating the
 119 sale, distribution, receipt, or possession of dextromethorphan

588-02318A-16

2016938c1

120 enacted by a county, municipality, or other political
121 subdivision of the state, and dextromethorphan is not subject to
122 further regulation by such political subdivisions.

123 Section 2. This act shall take effect January 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 20, 2016

The Honorable Nancy Detert
Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 938- Retail Sale of Dextromethorphan

Dear Madam Chair:

Please allow this letter to serve as my respectful request to agenda SB 938, Relating to Retail Sale of Dextromethorphan, for a public hearing at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Todd McKay

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 15, 2016

The Honorable Nancy Detert
Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 938- Retail Sale of Dextromethorphan

Dear Madam Chair:

Please allow this letter to serve as my respectful request for my legislative assistant, Mia Simon, to present SB 938 on my behalf as I have another commitment.

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

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Todd McKay

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/16

Meeting Date

938

Bill Number (if applicable)

Topic Dextromethorphan - Support SB 938

Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address 403 E. Park Ave.

Phone 577-0444

Street

Tallahassee

City

FL

State

32301

Zip

Email chansen@ballardfl.com

Speaking: For Against Information

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

Representing Consumer Healthcare Products Association (CHPA)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Commerce and Tourism

BILL: CS/CS/SB 1036

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Brandes

SUBJECT: Automobile Insurance

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1036 makes the following changes relating to automobile insurance:

Use of Rating Territories Contained Within a Single Zip-Code

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:
 - The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and
 - The Office of Insurance Regulation (OIR) determines that a rate filing using single-zip code rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

Cancellation of Policies Issued by the Florida Automobile Joint Underwriting Association

- Allows the Florida Automobile Joint Underwriting Association (Auto JUA) to cancel personal lines or commercial lines policies issued by the plan for nonpayment of premium if a check is dishonored for any reason or any other form of payment is rejected or deemed invalid. The cancellation may only occur within the first 60 days of the policy or binder.

- Prohibits an insured of the Auto JUA from cancelling a policy or binder within the first 90 days of its effective date unless the insured vehicle is totally destroyed, ownership of the vehicle is transferred, or another policy is purchased covering the vehicle.

Payment of Premium and Return of Unearned Premium

- Allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer.
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds.
- Exempts policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months' premium.

Personal Injury Protection (PIP)

- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.
- Clarifies and updates references to billing requirements under PIP.

The effective date is July 1, 2016.

II. Present Situation:

Automobile Insurance, Generally

The Office of Insurance Regulation (OIR) regulates the provision of automobile insurance. Automobile insurance coverage can include loss or damage to a vehicle; loss, liability, or expense as a result of ownership, maintenance, or use of a vehicle; medical, hospital, and surgical benefits to persons injured by a vehicle; and funeral and death benefits to survivors of someone killed by a vehicle.¹ Generally, automobile insurance covers either private individuals (Private Passenger Auto Insurance), or commercial vehicles and those who use them (Commercial Automobile Liability).

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., Florida's insurance rating law, provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory based on age, gender, marital status, or scholastic achievement² as determined by the Office of Insurance Regulation (OIR). Additionally, a motor vehicle insurer's use of a single zip code as a rating territory is deemed

¹ The Florida Office of Insurance Regulation, *Automobile Insurance, Definition*, available at: <http://www.floir.com/sections/pandc/automobile/default.aspx> (last visited Feb. 15, 2016).

² Section 626.9541(1)(o)9, F.S.

unfairly discriminatory by s. 627.0651(8), F.S.³ If the OIR finds, using generally accepted and reasonable actuarial techniques, that the insurer's filed rate is neither excessive, inadequate, nor unfairly discriminatory, then the OIR is required to approve the insurer's rates.⁴

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers⁵ that offer motor vehicle insurance in Florida must participate in the Auto Joint Underwriting Association (Auto JUA).⁶ The Auto JUA, or "Market of Last Resort," exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market.⁷ The Auto JUA distributes risk among its members, and generally has higher premiums as a result. The Auto JUA is subject to generally the same requirements as other auto insurers under the Florida Insurance Code, but is subject to additional various limitations. For example, the Auto JUA may not provide any inducement designed to retain a policy, and must subject its operation to supervision by a board of governors, members of which are appointed by the CFO and the insurance industry.⁸

Motor vehicle insurers, which include the Auto JUA, may cancel insurance policies in the following situations:⁹

- Nonpayment of premium; however, an insurer may only cancel a policy on the basis of nonpayment after 60 days from the effective date of the policy;
- Where the policy was obtained as a result of a material misrepresentation or fraud; or
- The driver's license or motor vehicle registration of the insured has been suspended or revoked during the policy period, or 180 days immediately prior to the insurance policy's effective date.

An insured may only cancel his or her policy within the first 60 days after its issuance if:¹⁰

- The insured vehicle was totally destroyed;
- The insured vehicle transferred ownership; or
- The insured has purchased another motor vehicle insurance policy.

Return of Unearned Premium upon Cancellation of Motor Vehicle Insurance

Unearned premium is the pro rata share of the overall insurance premium paid in advance for which insurance coverage will not ultimately be provided, generally because of cancellation of the policy. If an insured cancels his or her auto insurance policy prior to its full term, the insurer

³ An insurance rating territory is a geographical area that reflects a difference in risk to the insurance company, and is used in part to actuarially determine the insurance rate for a consumer in that rating territory. Janet Kaminski, *OLR Research Report, Territorial Rating for Auto Insurance* (Sep. 11, 2006), available at: <https://www.cga.ct.gov/2006/rpt/2006-R-0542.htm> (last visited Feb. 15, 2016).

⁴ Section 627.0651, F.S.

⁵ An insurer is every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity. Section 624.03, F.S.

⁶ Section 627.311, F.S.

⁷ Florida Automobile Joint Underwriting Association webpage, available at: <http://www.fajua.org/> (last visited Feb. 15, 2016).

⁸ Section 627.311, F.S.

⁹ Sections 627.7295 (4) and 627.728, F.S.

¹⁰ Section 627.7295(3), F.S.

must return the unearned premium to the insured within 30 days from the policy cancellation or receipt of notice of policy cancellation, whichever is later. If the insurer cancels the policy, the unearned premium must be returned to the insured within 15 days of the effective date of the policy's cancellation. These unearned portions of premiums must be mailed or electronically transferred to the insured by the insurer.¹¹

Requirement to Initially Pay 2 Months' Premium before Issuance of Private Passenger Motor Vehicle Insurance

Before a policy of private passenger motor vehicle insurance may be initially issued or bound, an insurer must collect 2 months' premium from the insured.¹² This requirement does not apply:

- To policy renewals or replacement policies issued by the same insurer group;
- To an insurer that issues private passenger motor vehicle insurance policies primarily to active duty or former personnel, or their dependents;
- If all policy payments are paid pursuant to a payroll deduction plan or an automatic electronic funds transfer payment from the policyholder;
- If all policy payments are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company if the policy includes Personal Injury Protection (PIP) insurance, property damage liability coverage of at least \$10,000, and bodily injury liability coverage of at least \$10,000 per person and \$20,000 per accident; or
- If the insured had a policy in effect for at least 6 months, then the insured's agent was terminated by his or her insurer, and the insured then obtains coverage on the policy's renewal date with a new company through the terminated agent.

Personal Injury Protection Insurance – Billings for Medical Services

Florida's Motor Vehicle No-Fault Law (the No-Fault Law)¹³ requires motorists to carry personal injury protection (PIP) coverage. PIP coverage provides \$10,000 in medical and disability benefits and a \$5,000 death benefit.¹⁴ Medical benefits are limited to \$2,500 if the injured person is determined to not have an emergency medical condition.¹⁵ The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents.¹⁶

Section 627.736(5)(d), F.S., requires all statements and bills for medical services reimbursable by PIP to be submitted according to specified criteria. The billings must be on properly completed Centers for Medicare and Medicaid Services (CMS) 1500 forms, UB 92 forms, or any other standard form approved by the OIR or adopted by the Financial Services Commission. Billings must, to the extent applicable, follow the Physicians' Current Procedural Terminology

¹¹ Section 627.7283, F.S.

¹² Section 627.7295(7), F.S.

¹³ Sections 627.730-627.7405, F.S.

¹⁴ Section 627.736(1), F.S.

¹⁵ Section 627.736(1)(a)4., F.S.

¹⁶ Section 627.737, F.S.

(CPT)¹⁷ or Healthcare Correct Procedural Coding System (HCPCS)¹⁸ or the International Classification of Diseases¹⁹ (ICD-9). Though the No-Fault Law requires use of the ICD-9, the current updated version is the ICD-10.²⁰

Personal Injury Protection Insurance –Health Care Clinic Licensure

The No-Fault Law requires entities that seek reimbursement under PIP coverage to obtain licensure under the Health Care Clinic Act,²¹ unless they are otherwise exempt from this requirement. The Health Care Clinic Act provides for the licensure, establishment, and enforcement of basic standards for health care clinics, and provides for administrative oversight by the Agency for Health Care Administration (AHCA).²²

Entities that are exempt from the Health Care Clinic Act include:

- Hospitals licensed under ch. 395, F.S.
- Ambulatory surgical centers licensed under ch. 395, F.S.
- Entities that wholly own or are wholly owned by a hospital licensed under ch. 395, F.S.
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.
- Entities wholly owned by:
 - Physicians licensed under ch. 458, F.S., or ch. 459, F.S.;
 - Dentists licensed under ch. 466, F.S.;
 - Chiropractic physicians licensed under ch. 460;
- Entities certified under 42 C.F.R. part 485, subpart H (entities qualified under Medicare to provide outpatient physical therapy and speech pathology services).

III. Effect of Proposed Changes:

Use of Rating Territories Contained Within a Single Zip-Code

Section 1 amends s. 627.0651, F.S., to allow motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:

- The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and

¹⁷ The American Medical Association CPT codes provide standardized nomenclature used to report medical procedures and services. See American Medical Association, *About CPT®*, <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/cpt/about-cpt.page> (last visited Feb. 15, 2016).

¹⁸ The HCPCS contains codes for products, supplies, and services not included in CPT codes such as durable medical equipment, prosthetics, orthotics, and supplies when used outside a physician's office. See Centers for Medicaid & Medicare Services, HCPCS – General Information HCPCS Background Information, <https://www.cms.gov/medicare/coding/medhcpcsgeninfo/index.html> (last visited Feb. 15, 2016).

¹⁹ The ICD classifies diseases and other health problems and is used by health care providers and insurers.

²⁰ World Health Organization, *International Classification of Diseases (ICD)*, <http://www.who.int/classifications/icd/en/> (last visited Feb. 15, 2016).

²¹ Sections 400.990 – 400.995, F.S.

²² Section 400.990, F.S.

- The Office of Insurance Regulation (OIR) determines that a rate filing using such rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

Florida Automobile Joint Underwriting Association Policies – Cancellation for Non-Payment of Premium

Section 2 amends s. 627.311(3), F.S., to allow the Florida Auto JUA to cancel personal or commercial lines policies they issue based on a nonpayment of premium if a check is dishonored for any reason, or any other form of payment is rejected or deemed invalid. Such cancellation may only occur within the first 60 days of the policy. The bill prohibits a consumer insured by an Auto JUA from cancelling a policy or binder within the first 90 days of its effective date unless the insured motor vehicle is totally destroyed, ownership of the vehicle is transferred, or after the purchase of another policy or binder covering the motor vehicle.

Motor Vehicle Insurance – Return of Unearned Premium upon Cancellation

Section 3 amends s. 627.7283, F.S., which sets the requirements for insurers to return the unearned premium to policyholders when insurance policies are cancelled by the insured or insurer. The bill allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer to the consumer.

Motor Vehicle Insurance – Methods of Premium Payment

Section 4 amends s. 627.7295, F.S., to exempt policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months' premium.

The bill also authorizes premiums to be paid in cash in the form of a draft or drafts. The bill allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if a payment via draft made by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed due to insufficient funds.

Personal Injury Protection

Section 5 amends s. 627.736(5)(d), F.S., to clarify that billings under the Motor Vehicle No-Fault law must follow the Physicians Current Procedural Terminology (CPT), the Healthcare Common Procedure Coding System in effect for the year in which services are rendered, and the International Classification of Diseases (ICD) adopted by the United States Department of Health and Human Services for the year in which services are rendered. Compliance with all three standardizes PIP billings and facilitates the timely adjustment and payment of benefits. The bill will require compliance with the current version of the ICD, the ICD-10.

The bill also exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

Section 6 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders of motor vehicle insurance will be subject to an insufficient funds fee of up to \$15 if payment by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed because of insufficient funds.

Health clinics that are owned by a publicly traded corporation that has \$250 million or more in sales of annual health care services provided by licensed health care practitioners and that are operated and supervised by one or more Florida-licensed health care practitioners are now exempt from the licensing requirements of part X of ch. 400, F.S., for purposes of reimbursement under ss. 627.730-627.7405, F.S. (the Florida Motor Vehicle No-Fault Law). This may result in a positive economic impact on such clinics.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill authorizes the payment of motor vehicle insurance premiums via cash by draft. However, s. 627.4035, F.S., currently allows payment by cash, check, debit card, credit card and electronic funds transfer. It is unclear what additional methods are captured by the bill. The \$15 insufficient funds fee authorized by the bill only applies to debit card, credit card, or automatic electronic funds transfer, all of which are currently available methods of payment under s. 627.4035, F.S., and thus would not apply to the additional methods of “draft” payment, if any, that are authorized by the bill.

Section 2 of the bill provides that a consumer who is insured by the Auto JUA may cancel his or her policy within the first *90 days* of its issuance for specified causes. However, s. 627.7295(3), F.S., which currently covers insured consumers of both traditional auto insurers and insured consumers of the Auto JUA, allows an insured to cancel his or her policy within the first *60 days* of its issuance for specified causes. This inconsistency may cause confusion.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.0651, 627.311, 627.7283, 627.7295, and 627.736.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Commerce and Tourism on February 16, 2016:

Deletes the provision from the bill that allows car insurance companies to choose whether or not to require a pre-insurance inspection of certain cars that apply for insurance from their company. This amendment maintains the status quo, which requires that certain cars purchased in the seven most populous counties in Florida are subject to a pre-insurance inspection.

CS by Banking and Insurance January 26, 2016:

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if specified requirements are met;
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds; and
- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 274 - 373.

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

And the title is amended as follows:

Delete lines 36 - 41

and insert:

the Florida Motor Vehicle No-Fault Law; providing an effective date.

By the Committee on Banking and Insurance; and Senator Brandes

597-02612-16

20161036c1

1 A bill to be entitled
 2 An act relating to automobile insurance; amending s.
 3 627.0651, F.S.; providing an exception to a provision
 4 that deems use of a single zip code as a rating
 5 territory for insurance rates to be unfairly
 6 discriminatory; requiring the Office of Insurance
 7 Regulation to ensure that rates or rate changes
 8 contained in certain rate filings are not excessive,
 9 inadequate, or unfairly discriminatory; amending s.
 10 627.311, F.S.; authorizing the Florida Automobile
 11 Joint Underwriting Association and a joint
 12 underwriting plan approved by the Office of Insurance
 13 Regulation to cancel personal lines or commercial
 14 policies within a specified time for nonpayment of
 15 premium due to certain reasons; prohibiting an insured
 16 from cancelling a policy or binder within a specified
 17 time except under certain conditions; amending s.
 18 627.7283, F.S.; authorizing an insured who cancels a
 19 policy to apply the unearned portion of any premium
 20 paid to unpaid balances of other policies with the
 21 same insurer or insurer group; amending s. 627.7295,
 22 F.S.; updating applicability language to include a
 23 reference to recurring credit card or debit card
 24 payments; authorizing an additional form of payment
 25 for certain motor vehicle insurance contract premiums;
 26 authorizing an insurer to impose a specified
 27 insufficient funds fee under certain circumstances;
 28 amending s. 627.736, F.S.; requiring that a certain
 29 standard form be approved by the office and adopted by
 30 the Financial Services Commission, rather than
 31 approved by the office or adopted by the commission;
 32 revising standards for compliance for specified

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

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33 billings for medical services; adding a specified
 34 entity to a list of entities that are not required to
 35 be licensed as a clinic to receive reimbursement under
 36 the Florida Motor Vehicle No-Fault Law; amending s.
 37 627.744, F.S.; authorizing an insurer to opt out of
 38 the preinsurance inspection of private passenger motor
 39 vehicles and to establish its own preinsurance
 40 inspection program if it files a certain manual rule
 41 with the office; providing an effective date.
 42

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

44
 45 Section 1. Subsection (8) of section 627.0651, Florida
 46 Statutes, is amended to read:

47 627.0651 Making and use of rates for motor vehicle
 48 insurance.—

49 (8) Rates are not unfairly discriminatory if averaged
 50 broadly among members of a group; nor are rates unfairly
 51 discriminatory even though they are lower than rates for
 52 nonmembers of the group. However, such rates are unfairly
 53 discriminatory if they are not actuarially measurable and
 54 credible and sufficiently related to actual or expected loss and
 55 expense experience of the group so as to assure that nonmembers
 56 of the group are not unfairly discriminated against. Use of a
 57 single United States Postal Service zip code as a rating
 58 territory shall be deemed unfairly discriminatory unless filed
 59 pursuant to paragraph (1)(a) and the territory incorporates
 60 sufficient actual or expected loss and loss adjustment expense
 61 experience so as to be actuarially measurable and credible. The

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62 office shall ensure that any rate filing resulting from the use
 63 of a single zip code as a rating territory does not contain a
 64 rate or rate change that is excessive, inadequate, or unfairly
 65 discriminatory.

66 Section 2. Paragraph (m) is added to subsection (3) of
 67 section 627.311, Florida Statutes, to read:

68 627.311 Joint underwriters and joint reinsurers; public
 69 records and public meetings exemptions.—

70 (3) The office may, after consultation with insurers
 71 licensed to write automobile insurance in this state, approve a
 72 joint underwriting plan for purposes of equitable apportionment
 73 or sharing among insurers of automobile liability insurance and
 74 other motor vehicle insurance, as an alternate to the plan
 75 required in s. 627.351(1). All insurers authorized to write
 76 automobile insurance in this state shall subscribe to the plan
 77 and participate therein. The plan shall be subject to continuous
 78 review by the office which may at any time disapprove the entire
 79 plan or any part thereof if it determines that conditions have
 80 changed since prior approval and that in view of the purposes of
 81 the plan changes are warranted. Any disapproval by the office
 82 shall be subject to the provisions of chapter 120. The Florida
 83 Automobile Joint Underwriting Association is created under the
 84 plan. The plan and the association:

85 (m) May cancel personal lines or commercial policies issued
 86 by the plan within the first 60 days after the effective date of
 87 the policy or binder for nonpayment of premium if the check
 88 issued for payment of the premium is dishonored for any reason
 89 or if any other form of payment is rejected or deemed invalid.
 90 An insured may not cancel a policy or binder within the first 90

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91 days after its effective date, or within a lesser period as
 92 required by the plan, except:

93 1. Upon total destruction of the insured motor vehicle;
 94 2. Upon transfer of ownership of the insured motor vehicle;

95 or

96 3. After purchase of another policy or binder covering the
 97 motor vehicle that was covered under the policy being canceled.

98 Section 3. Section 627.7283, Florida Statutes, is amended
 99 to read:

100 627.7283 Cancellation; return of unearned premium.—

101 (1) If the insured cancels a policy of motor vehicle
 102 insurance, the insurer must mail or electronically transfer the
 103 unearned portion of any premium paid within 30 days after the
 104 effective date of the policy cancellation or receipt of notice
 105 or request for cancellation, whichever is later. This
 106 requirement applies to a cancellation initiated by an insured
 107 for any reason. However, the insured may apply the unearned
 108 portion of any premium paid to unpaid balances of other policies
 109 with the same insurer or insurer group.

110 (2) If an insurer cancels a policy of motor vehicle
 111 insurance, the insurer must mail or electronically transfer the
 112 unearned premium portion of any premium within 15 days after the
 113 effective date of the policy cancellation. However, the insured
 114 may apply the unearned portion of any premium paid to unpaid
 115 balances of other policies with the same insurer or insurer
 116 group.

117 (3) If the unearned premium is not mailed, ~~or~~
 118 electronically transferred, or applied to the unpaid balance of
 119 other policies within the applicable period, the insurer must

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120 pay to the insured 8 percent interest on the amount due. If the
 121 unearned premium is not mailed or electronically transferred
 122 within 45 days after the applicable period, the insured may
 123 bring an action against the insurer pursuant to s. 624.155.

124 (4) If the insured cancels, the insurer may retain up to 10
 125 percent of the unearned premium and must refund at least 90
 126 percent of the unearned premium. If the insurer cancels, the
 127 insurer must refund 100 percent of the unearned premium.
 128 Cancellation is without prejudice to any claim originating prior
 129 to the effective date of the cancellation. For purposes of this
 130 section, unearned premiums must be computed on a pro rata basis.

131 (5) The insurer must refund 100 percent of the unearned
 132 premium if the insured is a servicemember, as defined in s.
 133 250.01, who cancels because he or she is called to active duty
 134 or transferred by the United States Armed Forces to a location
 135 where the insurance is not required. The insurer may require a
 136 servicemember to submit either a copy of the official military
 137 orders or a written verification signed by the servicemember's
 138 commanding officer to support the refund authorized under this
 139 subsection. If the insurer cancels, the insurer must refund 100
 140 percent of the unearned premium. Cancellation is without
 141 prejudice to any claim originating prior to the effective date
 142 of the cancellation. For purposes of this section, unearned
 143 premiums must be computed on a pro rata basis.

144 Section 4. Subsection (7) of section 627.7295, Florida
 145 Statutes, is amended, and a new subsection (9) is added to that
 146 section, to read:

147 627.7295 Motor vehicle insurance contracts.-

148 (7) A policy of private passenger motor vehicle insurance

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149 or a binder for such a policy may be initially issued in this
 150 state only if, before the effective date of such binder or
 151 policy, the insurer or agent has collected from the insured an
 152 amount equal to 2 months' premium. An insurer, agent, or premium
 153 finance company may not, directly or indirectly, take any action
 154 resulting in the insured having paid from the insured's own
 155 funds an amount less than the 2 months' premium required by this
 156 subsection. This subsection applies without regard to whether
 157 the premium is financed by a premium finance company or is paid
 158 pursuant to a periodic payment plan of an insurer or an
 159 insurance agent. This subsection does not apply if an insured or
 160 member of the insured's family is renewing or replacing a policy
 161 or a binder for such policy written by the same insurer or a
 162 member of the same insurer group. This subsection does not apply
 163 to an insurer that issues private passenger motor vehicle
 164 coverage primarily to active duty or former military personnel
 165 or their dependents. This subsection does not apply if all
 166 policy payments are paid pursuant to a payroll deduction plan,
 167 ~~or~~ an automatic electronic funds transfer payment plan from the
 168 policyholder, or a recurring credit card or debit card agreement
 169 with the insurer. This subsection and subsection (4) do not
 170 apply if all policy payments to an insurer are paid pursuant to
 171 an automatic electronic funds transfer payment plan from an
 172 agent, a managing general agent, or a premium finance company
 173 and if the policy includes, at a minimum, personal injury
 174 protection pursuant to ss. 627.730-627.7405; motor vehicle
 175 property damage liability pursuant to s. 627.7275; and bodily
 176 injury liability in at least the amount of \$10,000 because of
 177 bodily injury to, or death of, one person in any one accident

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178 and in the amount of \$20,000 because of bodily injury to, or
 179 death of, two or more persons in any one accident. This
 180 subsection and subsection (4) do not apply if an insured has had
 181 a policy in effect for at least 6 months, the insured's agent is
 182 terminated by the insurer that issued the policy, and the
 183 insured obtains coverage on the policy's renewal date with a new
 184 company through the terminated agent.

185 (9) (a) In addition to the methods provided in s.
 186 627.4035(1), the premiums for motor vehicle insurance contracts
 187 issued in this state or covering risk located in this state may
 188 be paid in cash in the form of a draft or drafts.

189 (b) If a payment of premium under this subsection by debit
 190 card, credit card, or automatic electronic funds transfer is
 191 returned or declined or cannot be processed due to insufficient
 192 funds, the insurer may impose an insufficient funds fee of up to
 193 \$15 per occurrence pursuant to the policy terms.

194 Section 5. Paragraphs (d) and (h) of subsection (5) of
 195 section 627.736, Florida Statutes, are amended to read:

196 627.736 Required personal injury protection benefits;
 197 exclusions; priority; claims.—

198 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

199 (d) All statements and bills for medical services rendered
 200 by a physician, hospital, clinic, or other person or institution
 201 shall be submitted to the insurer on a properly completed
 202 Centers for Medicare and Medicaid Services (CMS) 1500 form, UB
 203 92 forms, or any other standard form approved by the office and
 204 ~~or~~ adopted by the commission for purposes of this paragraph. All
 205 billings for such services rendered by providers must, to the
 206 extent applicable, comply with the CMS 1500 form instructions,

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207 the American Medical Association CPT Editorial Panel, and the
 208 Healthcare Common Procedure Coding System (HCPCS); and must
 209 follow the Physicians' Current Procedural Terminology (CPT), the
 210 HCPCS in effect for the year in which services are rendered, and
 211 the International Classification of Diseases (ICD) adopted by
 212 the United States Department of Health and Human Services for
 213 the service year in which the services, supplies, or care is
 214 rendered as described in subparagraph (a)2. ~~follow the~~
 215 Physicians' Current Procedural Terminology (CPT) or Healthcare
 216 Correct Procedural Coding System (HCPCS), or ICD-9 in effect for
 217 the year in which services are rendered and comply with the CMS
 218 1500 form instructions, the American Medical Association CPT
 219 Editorial Panel, and the HCPCS. All providers, other than
 220 hospitals, must include on the applicable claim form the
 221 professional license number of the provider in the line or space
 222 provided for "Signature of Physician or Supplier, Including
 223 Degrees or Credentials." In determining compliance with
 224 applicable CPT and HCPCS coding, guidance shall be provided by
 225 the ~~Physicians' Current Procedural Terminology (CPT) or the~~
 226 ~~Healthcare Correct Procedural Coding System (HCPCS)~~ in effect
 227 for the year in which services were rendered, the Office of the
 228 Inspector General, Physicians Compliance Guidelines, and other
 229 authoritative treatises designated by rule by the Agency for
 230 Health Care Administration. A statement of medical services may
 231 not include charges for medical services of a person or entity
 232 that performed such services without possessing the valid
 233 licenses required to perform such services. For purposes of
 234 paragraph (4) (b), an insurer is not considered to have been
 235 furnished with notice of the amount of covered loss or medical

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236 bills due unless the statements or bills comply with this
237 paragraph and are properly completed in their entirety as to all
238 material provisions, with all relevant information being
239 provided therein.

240 (h) As provided in s. 400.9905, an entity excluded from the
241 definition of a clinic shall be deemed a clinic and must be
242 licensed under part X of chapter 400 in order to receive
243 reimbursement under ss. 627.730-627.7405. However, this
244 licensing requirement does not apply to:

245 1. An entity wholly owned by a physician licensed under
246 chapter 458 or chapter 459, or by the physician and the spouse,
247 parent, child, or sibling of the physician;

248 2. An entity wholly owned by a dentist licensed under
249 chapter 466, or by the dentist and the spouse, parent, child, or
250 sibling of the dentist;

251 3. An entity wholly owned by a chiropractic physician
252 licensed under chapter 460, or by the chiropractic physician and
253 the spouse, parent, child, or sibling of the chiropractic
254 physician;

255 4. A hospital or ambulatory surgical center licensed under
256 chapter 395;

257 5. An entity that wholly owns or is wholly owned, directly
258 or indirectly, by a hospital or hospitals licensed under chapter
259 395;

260 6. An entity that is a clinical facility affiliated with an
261 accredited medical school at which training is provided for
262 medical students, residents, or fellows; ~~or~~

263 7. An entity that is certified under 42 C.F.R. part 485,
264 subpart H; or

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265 8. An entity that is owned by a publicly traded
266 corporation, either directly or indirectly through its
267 subsidiaries, that has \$250 million or more in total annual
268 sales of health care services provided by licensed health care
269 practitioners, if one or more of the persons responsible for the
270 operations of the entity are health care practitioners who are
271 licensed in this state and are responsible for supervising the
272 business activities of the entity and the entity's compliance
273 with state law for purposes of this section.

274 Section 6. Section 627.744, Florida Statutes, is amended to
275 read:

276 627.744 ~~Required~~ Preinsurance inspection of private
277 passenger motor vehicles.-

278 (1) A private passenger motor vehicle insurance policy
279 providing physical damage coverage, including collision or
280 comprehensive coverage, may not be issued in this state unless
281 the insurer has inspected the motor vehicle in accordance with
282 this section or has opted out of the inspection under this
283 section. An insurer opting out of the inspection must file a
284 manual rule with the office indicating that the insurer will not
285 be participating in the inspection program under this section
286 and will not require the preinsurance inspection of its
287 insureds' motor vehicles. An insurer that files such a manual
288 rule with the office may establish its own preinsurance
289 inspection program.

290 (2) This section does not apply:

291 (a) To a policy for a policyholder who has been insured for
292 2 years or longer, without interruption, under a private
293 passenger motor vehicle policy that provides physical damage

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294 coverage for any vehicle if the agent of the insurer verifies
295 the previous coverage.

296 (b) To a new, unused motor vehicle purchased or leased from
297 a licensed motor vehicle dealer or leasing company. The insurer
298 may require:

299 1. A bill of sale, buyer's order, or lease agreement that
300 contains a full description of the motor vehicle; or

301 2. A copy of the title or registration that establishes
302 transfer of ownership from the dealer or leasing company to the
303 customer and a copy of the window sticker.

304

305 For the purposes of this paragraph, the physical damage coverage
306 on the motor vehicle may not be suspended during the term of the
307 policy due to the applicant's failure to provide or the
308 insurer's option not to require the documents. However, if the
309 insurer requires a document under this paragraph at the time the
310 policy is issued, payment of a claim may be conditioned upon the
311 receipt by the insurer of the required documents, and no
312 physical damage loss occurring after the effective date of the
313 coverage may be payable until the documents are provided to the
314 insurer.

315 (c) To a temporary substitute motor vehicle.

316 (d) To a motor vehicle which is leased for less than 6
317 months, if the insurer receives the lease or rental agreement
318 containing a description of the leased motor vehicle, including
319 its condition. Payment of a physical damage claim is conditioned
320 upon receipt of the lease or rental agreement.

321 (e) To a vehicle that is 10 years old or older, as
322 determined by reference to the model year.

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323 (f) To any renewal policy.

324 (g) To a motor vehicle policy issued in a county with a
325 1988 estimated population of less than 500,000.

326 (h) To any other vehicle or policy exempted by rule of the
327 commission. The commission may base a rule under this paragraph
328 only on a determination that the likelihood of a fraudulent
329 physical damage claim is remote or that the inspection would
330 cause a serious hardship to the insurer or the applicant.

331 (i) When the insurer's authorized inspection service has no
332 inspection facility either in the municipality in which the
333 automobile is principally garaged or within 10 miles of such
334 municipality.

335 (j) When the insured vehicle is insured under a
336 commercially rated policy that insures five or more vehicles.

337 (k) When an insurance producer is transferring a book of
338 business from one insurer to another.

339 (l) When an individual insured's coverage is being
340 transferred and initiated by a producer to a new insurer.

341 (3) This subsection does not prohibit an insurer from
342 requiring a preinsurance inspection of any motor vehicle as a
343 condition of issuance of physical damage coverage.

344 (4) The inspection required by this section shall be
345 provided by the insurer or by a person or organization
346 authorized by the insurer. The applicant may be required to pay
347 the cost of the inspection, not to exceed \$5. The inspection
348 shall be recorded on a form prescribed by the commission, and
349 the form or a copy shall be retained by the insurer with its
350 policy records for the insured. The insurer shall provide a copy
351 of the form to the insured upon request. Any inspection fee paid

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352 directly by the applicant may not be considered part of the
353 premium. However, an insurer that provides the inspection at no
354 cost to the applicant may include the expense of the inspection
355 within a rate filing.

356 (5) The inspection shall include at least the following:

357 (a) Taking a physical imprint of the vehicle identification
358 number of the vehicle or otherwise recording the vehicle
359 identification number in a manner prescribed by the commission.

360 (b) Recording the presence of accessories required by the
361 commission to be recorded.

362 (c) Recording the locations of and a description of
363 existing damage to the vehicle.

364 (6) An insurer may defer an inspection for 30 calendar days
365 following the effective date of coverage for a new policy, but
366 not for a renewal policy, and for additional or replacement
367 vehicles to an existing policy, if an inspection at the time of
368 the request for coverage would create a serious inconvenience
369 for the applicant and such hardship is documented in the
370 insured's policy record.

371 (7) The commission may, by rule, establish such procedures
372 and notice requirements that it finds necessary to implement
373 this section.

374 Section 7. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that **Senate Bill #1036**, relating to **Automobile Insurance**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting Date

1036
Bill Number (if applicable)

807944
Amendment Barcode (if applicable)

Topic auto inspections

Name Jennifer West

Job Title Executive Director

Address PO BOX 14956
Street

Phone 850-933-8514

Tallahassee FL 32317
City State Zip

Email jwest@consumerfederationhouse.com

Speaking: For Against Information

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

Representing Consumer Federation of the Southeast

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/2016
Meeting Date

1036
Bill Number (if applicable)

807944
Amendment Barcode (if applicable)

Topic pre-insurance auto inspections

Name Jan Gorvie

Job Title lobbyist

Address 403 E. Park Ave.
Street

Phone 813 - 334-5288

Tallahassee FL 32301
City State Zip

Email jan@bullardfl.com

Speaking: For Against Information
the amendment

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

Representing CARCO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting/Date

1036
Bill Number (if applicable)

Topic Automobile Insurance

Amendment Barcode (if applicable)

Name Darren Patz

Job Title Vice President, Government Affairs

Address _____
Street

Phone 786-473-4431

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing MEDNAX National Medical Group

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.16.16
Meeting Date

1036
Bill Number (if applicable)

Topic autism

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E Colyer

Phone 222-9075

Street

City

State

Zip

Email akalifeh@cap.org

Speaking: For Against Information

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

Representing AIF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Commerce and Tourism

BILL: CS/SB 1216

INTRODUCER: Commerce and Tourism Committee and Senator Stargel

SUBJECT: Reemployment Assistance Fraud

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1216 creates the “Department of Economic Opportunity Cybercrime Prevention Act.” The bill provides the Department of Highway Safety and Motor Vehicles the authority to issue reproductions of images and signatures from driver’s licenses to the Department of Economic Opportunity (DEO) for the purpose of facilitating the detection of fraud and identity theft in reemployment assistance claims.

The bill increases the penalties required to be imposed when an individual is found to have knowingly made a false or fraudulent representation in order to receive reemployment assistance benefits the individual would not otherwise be entitled to. Specifically, if the representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, the individual will be disqualified as follows:

- 5 years from the date of the conviction of the individual for such state or federal felony crime and until any amount received due to the representation is repaid; and
- 10 years from the date of the second or subsequent conviction of the individual for such state or federal felony crime and until any amount received due to the representation is repaid.

The bill amends the definition of “racketeering activity” to include false or fraudulent representations made in violation of the Reemployment Assistance Program.

The bill takes effect upon becoming law.

II. Present Situation:

Reemployment Assistance Program

The federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.²

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "Reemployment Assistance Program" in 2012.⁴ The Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.⁵

An unemployed individual must apply to the DEO for benefits using Florida's Online Reemployment Assistance System.⁶ To receive benefits, a claimant must meet certain monetary and nonmonetary eligibility requirements and provide proof of identification.⁷ Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.⁸

Fraudulent Claims

In 2014, the DEO implemented the Fraud Initiative and Rules Rating Engine (FIRRE) program in order to detect fraud and identity theft within public-assistance programs.⁹ In the first year of implementation, the FIRRE program detected over 70,000 fraudulent claims for reemployment assistance benefits.¹⁰

In order to identify falsely filed claims, the FIRRE program cross matches identification information with external entities, including the claimant's social security and driver's license information.¹¹ To cross match driver's license information, the DEO has been provided limited access to the information database used by the Department of Highway Safety and Motor Vehicles (HSMV).¹² The DEO's current access does not provide digital images contained in

¹ United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Feb. 11, 2016).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ Chapter 18402, L.O.F.

⁴ Chapter 2012-30, L.O.F.

⁵ Section 20.60(5)(c), F.S., and s. 443.171, F.S.

⁶ Rule 73B-11.013, F.A.C.

⁷ See s. 443.091, F.S., and Rule 73B-11.013, F.A.C.

⁸ Section 445.151(3)(a), F.S.

⁹ Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. DEO, RE: Identify Theft and Fraud in Public Benefit Systems (March 13, 2015).

¹⁰ *Id.*

¹¹ Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

¹² *Id.*

HSMV's Driver and Vehicle Information Database (DAVID), because such access is not provided by current law.¹³ Under s. 322.142, F.S., other state agencies have been given access to reproductions of the digital images for similar purposes.¹⁴

Penalties and Disqualification

Under current law, any person who establishes a fictitious employing unit¹⁵ by submitting fraudulent documents through a computer system, by alteration or destruction of computer files, or by theft of financial instruments, data, and other assets for the purpose of enabling any person to receive benefits under the reemployment program commits a felony of the third degree.¹⁶ Establishment of a fictitious employing unit in violation of the Reemployment Assistance Program is considered racketeering activity under Florida law.¹⁷

Any person who makes false or fraudulent representations for the purpose of obtaining benefits contrary to the Reemployment Assistance Program commits a felony of the third degree.¹⁸ Each false or fraudulent representation constitutes a separate offense.¹⁹ A person who makes such representation is subject to a disqualification of benefits, beginning with the week in which the false or fraudulent representation is made.²⁰ The disqualification may be imposed for a period of up to 1 year following the date the DEO discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation is repaid in full.²¹ The duration of disqualification for false or fraudulent representations in other states is comparable to Florida's current penalty, as the disqualification time period in most states is 52 weeks.²²

A disqualification may be appealed in the same manner as appeals of determinations and redeterminations.²³ However, a conviction of an offense prohibited by s. 443.071, F.S., is conclusive upon the appeals referee and the commission of the making of the false or fraudulent statement.²⁴

¹³ *Id.*

¹⁴ Section 322.142(4), F.S., provides access to the digital images contained in DAVID to the Department of Business and Professional Regulation, the Department of Health, the Department of State, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Financial Services.

¹⁵ An employing unit means "an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing; or the legal representative of a deceased person; which has or had in its employ one or more individuals performing services for it within this state." Section 443.036(20), F.S.

¹⁶ Section 443.071(4), F.S.

¹⁷ Section 865.02(1)(a)7., F.S.

¹⁸ Section 443.071(1), F.S.

¹⁹ *Id.*

²⁰ Section 443.101(6), F.S.

²¹ *Id.*

²² For a review of other state laws, see US Dept. of Labor, *Comparison of State Unemployment Laws*, available at <http://www.unemploymentinsurance.doleta.gov/unemploy/comparison2015.asp> (last visited Feb. 12, 2016).

²³ Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).

²⁴ *Id.*

Recovery for Overpayment

Any person who receives benefits by fraud, to which he or she is not entitled, is liable for repaying those benefits to the DEO.²⁵ Florida law also allows the DEO to impose a penalty equal to 15 percent of the amount overpaid.²⁶

Upon discovery of an overpayment, the DEO makes a determination of the amount of overpayment and attempts to make recovery of the payment. To enforce this provision, the DEO must find the existence of fraud through a redetermination or a decision within 2 years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within 7 years after the redetermination or decision.²⁷ The DEO is required to collect the repayment of benefits without interest by the deduction of benefits through a redetermination of benefits or by a civil action.²⁸

III. Effect of Proposed Changes:

Section 1 creates the “Department of Economic Opportunity Cybercrimes Prevention Act.”

Section 2 amends s. 322.142, F.S., to provide the HSMV authorization to make and issue reproductions of color photographic or digital imaged licenses and signatures of licensees to the DEO. The DEO will be able to use such reproductions for the purpose of facilitating the validation of reemployment assistance claims and the identification of fraudulent or false reemployment assistance claims. Allowing the DEO access to the HSMV database will likely increase the number of false or fraudulent claims detected by the DEO.²⁹

Section 3 amends s. 443.101(6), F.S., to increase the time period for which an individual can be disqualified from receiving reemployment assistance benefits when the individual is found to have made false or fraudulent representations in violation of the Reemployment Assistance Program. Specifically, the bill provides that if the representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, the individual will be disqualified as follows:

- 5 years from the date of the conviction of the individual for such state or federal felony crime and until any amount received due to the representation is repaid; and
- 10 years from the date of the second or subsequent conviction of the individual for such state or federal felony crime and until any amount received due to the representation is repaid.

Section 4 amends s. 895.02(1)(a)7, F.S., to provide that “racketeering activity” includes additional actions found to violate the Reemployment Assistance Program. Specifically, the bill includes the crime of making a false or fraudulent representation in order to receive reemployment assistance benefits, which is chargeable under s. 443.01(1), F.S.

Section 5 provides that the bill is effective upon becoming law.

²⁵ Section 445.151(6)(a), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 445.151(6)(e), F.S.

²⁹ Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 322.142, 443.101, 895.02.

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 Commerce and Tourism on February 16, 2016:

The committee substitute:

- Removes the authority of the DEO to hire law enforcement officers in order to investigate, enforce, and prosecute violations of the Reemployment Assistance Program;
- Changes the penalties required to be imposed when an individual is found to have knowingly made a false or fraudulent representation in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information; and
- Removes the authority of the DEO to collect the repayment of benefits received by an individual's false or fraudulent representations through attachment or garnishment.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 155
and insert:

Section 2. Present paragraphs (k) and (l) of subsection (4) of section 322.142, Florida Statutes, are redesignated as paragraphs (l) and (m), respectively, and a new paragraph (k) is added to that subsection, to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print



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11 file. The department shall maintain a record of the digital
12 image and signature of the licensees, together with other data
13 required by the department for identification and retrieval.
14 Reproductions from the file or digital record are exempt from
15 the provisions of s. 119.07(1) and may be made and issued only:

16 (k) To the Department of Economic Opportunity pursuant to
17 an interagency agreement to facilitate the validation of
18 reemployment assistance claims and the identification of
19 fraudulent or false reemployment assistance claims.

20 Section 3. Subsection (6) of section 443.101, Florida
21 Statutes, is amended to read:

22 443.101 Disqualification for benefits.—An individual shall
23 be disqualified for benefits:

24 (6) For making any false or fraudulent representation for
25 the purpose of obtaining benefits contrary to this chapter,
26 constituting a violation under s. 443.071. The disqualification
27 imposed under this subsection shall begin with the week in which
28 the false or fraudulent representation is made and shall
29 continue for a period not to exceed 1 year after the date the
30 Department of Economic Opportunity discovers the false or
31 fraudulent representation and until any overpayment of benefits
32 resulting from such representation has been repaid in full.
33 However, if the false or fraudulent representation made for the
34 purpose of obtaining benefits contrary to this chapter,
35 constituting a violation under s. 443.071, is made in
36 furtherance of any state or federal felony crime relating to
37 identity theft or inappropriate use of personally identifying
38 information, the disqualification imposed under this subsection
39 shall be for a period of 5 years after the date the individual



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40 is convicted of such state or federal felony crime the first
41 time, and 10 years after the date the individual is convicted of
42 such state or federal felony crime the second or subsequent
43 time.

44
45 These disqualifications ~~This disqualification~~ may be appealed in
46 the same manner as any other disqualification imposed under this
47 section. A conviction by any court of competent jurisdiction in
48 this state of the offense prohibited or punished by s. 443.071
49 is conclusive upon the appeals referee and the commission of the
50 making of the false or fraudulent representation for which
51 disqualification is imposed under this section.

52
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete lines 3 - 19

56 and insert:

57 providing a short title; amending s. 322.142, F.S.;

58 adding the Department of Economic Opportunity as an

59 entity that may be issued reproductions from certain

60 files or digital records for specified reasons;

61 amending s. 443.101, F.S.; revising provisions

62 relating to disqualification from unemployment

63 benefits; amending s. 895.02, F.S.;

By Senator Stargel

15-01190A-16

20161216__

1 A bill to be entitled
 2 An act relating to reemployment assistance fraud;
 3 providing a short title; amending s. 20.60, F.S.;
 4 authorizing the Department of Economic Opportunity to
 5 employ law enforcement officers to investigate
 6 violations of ch. 443, F.S.; providing qualifications
 7 for employment or appointment as a law enforcement
 8 officer; specifying the responsibilities of such a law
 9 enforcement officer; amending s. 322.142, F.S.; adding
 10 the department as an entity that may be issued
 11 reproductions from certain files or digital records
 12 for specified reasons; amending s. 443.101, F.S.;
 13 providing for disqualification from eligibility for
 14 reemployment benefits for a specified period of time
 15 determined by the number of incidents of false or
 16 fraudulent representation and date of repayment of
 17 certain overpayments; amending s. 443.151, F.S.;
 18 providing methods for the department to collect
 19 repayment of benefits; amending s. 895.02, F.S.;
 20 expanding the definition of the term "racketeering
 21 activity" to include knowingly making false statements
 22 or representations or knowingly failing to disclose a
 23 material fact to obtain or increase benefits or other
 24 payments under ch. 443, F.S., and other specified
 25 laws; providing an effective date.

26
 27 WHEREAS, the incidence of identity theft and resulting
 28 fraud has reached a crisis level, and

29 WHEREAS, identity theft is especially problematic in this
 30 state, which the Federal Trade Commission reports has the
 31 highest per capita rate of identity theft in the nation, and

32 WHEREAS, stolen identities are used to commit an ever-

Page 1 of 9

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

15-01190A-16

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33 expanding range of fraud, including public assistance fraud, and
 34 WHEREAS, identity theft and related fraud harm those whose
 35 identities are stolen, rob the social safety net of precious
 36 resources, impose unwarranted costs on taxpayers, and undermine
 37 public confidence in government, and

38 WHEREAS, the Department of Economic Opportunity's efforts
 39 to detect, prevent, and prosecute fraud have revealed that
 40 thousands of fraudulent claims for reemployment assistance are
 41 being filed, and

42 WHEREAS, the Department of Economic Opportunity has made
 43 prevention, detection, and prosecution of reemployment
 44 assistance fraud a top priority and has identified additional
 45 resources and tools necessary to effectively combat fraud, NOW,
 46 THEREFORE,

47

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

49

50 Section 1. This act may be cited as the "Department of
 51 Economic Opportunity Cybercrime Prevention Act."

52 Section 2. Paragraph (d) is added to subsection (5) of
 53 section 20.60, Florida Statutes, to read:

54 20.60 Department of Economic Opportunity; creation; powers
 55 and duties.—

56 (5) The divisions within the department have specific
 57 responsibilities to achieve the duties, responsibilities, and
 58 goals of the department. Specifically:

59 (d) The Division of Workforce Services may employ law
 60 enforcement officers. Each law enforcement officer employed by
 61 the division must meet the requirements for employment or

Page 2 of 9

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

15-01190A-16 20161216__
 62 appointment as a law enforcement officer specified in s. 943.13
 63 and must be certified under chapter 943 as a law enforcement
 64 officer by the Department of Law Enforcement. Each law
 65 enforcement officer has statewide jurisdiction and authority
 66 granted by chapter 901.

67 1. The primary responsibility of each law enforcement
 68 officer appointed under this section is the statewide
 69 investigation, enforcement, and prosecution of violations of
 70 chapter 443 and rules adopted thereunder, as well as other state
 71 laws that the division is specifically authorized to enforce.

72 2. The secondary responsibility of each law enforcement
 73 officer appointed under this section is to enforce all other
 74 state laws; however, such enforcement must be incidental to the
 75 officer's exercise of his or her primary responsibility, and an
 76 officer may exercise the powers of a deputy sheriff only after
 77 consultation or coordination with the appropriate local
 78 sheriff's office or municipal police department or when the
 79 division participates in the Florida Mutual Aid Plan during a
 80 declared state emergency.

81 Section 3. Present paragraphs (k) and (l) of subsection (4)
 82 of section 322.142, Florida Statutes, are redesignated as
 83 paragraphs (l) and (m), respectively, and a new paragraph (k) is
 84 added to that subsection, to read:

85 322.142 Color photographic or digital imaged licenses.—

86 (4) The department may maintain a film negative or print
 87 file. The department shall maintain a record of the digital
 88 image and signature of the licensees, together with other data
 89 required by the department for identification and retrieval.
 90 Reproductions from the file or digital record are exempt from

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 91 the provisions of s. 119.07(1) and may be made and issued only:
 92 (k) To the Department of Economic Opportunity pursuant to
 93 an interagency agreement to facilitate the validation of
 94 reemployment assistance claims and the identification of
 95 fraudulent or false reemployment assistance claims.

96 Section 4. Subsection (6) of section 443.101, Florida
 97 Statutes, is amended to read:

98 443.101 Disqualification for benefits.—An individual shall
 99 be disqualified for benefits:

100 (6) For making any false or fraudulent representation for
 101 the purpose of obtaining benefits contrary to this chapter,
 102 constituting a violation under s. 443.071. The disqualification
 103 imposed under this subsection begins ~~shall begin~~ with the week
 104 in which the false or fraudulent representation is made and
 105 continues ~~shall continue~~ for a period of:

106 (a) Five years ~~not to exceed 1 year~~ after the date the
 107 Department of Economic Opportunity discovers the first incident
 108 of false or fraudulent representation and until any overpayment
 109 of benefits resulting from such representation has been repaid
 110 in full.

111 (b) Ten years after the date the Department of Economic
 112 Opportunity discovers the second incident of false or fraudulent
 113 representation, which must occur in a benefit year other than
 114 the benefit year of the first incident, and until any
 115 overpayment of benefits resulting from such representation has
 116 been repaid in full.

117 (c) The lifetime of the individual after the date the
 118 Department of Economic Opportunity discovers the third incident
 119 of false or fraudulent representation, which must occur in a

15-01190A-16 20161216__
 120 benefit year that is not the benefit year of the first or second
 121 incident.

122
 123 This disqualification may be appealed in the same manner as any
 124 other disqualification imposed under this section. A conviction
 125 by any court of competent jurisdiction in this state of the
 126 offense prohibited or punished by s. 443.071 is conclusive upon
 127 the appeals referee and the commission of the making of the
 128 false or fraudulent representation for which disqualification is
 129 imposed under this section.

130 Section 5. Paragraph (e) of subsection (6) of section
 131 443.151, Florida Statutes, is amended to read:

132 443.151 Procedure concerning claims.—

133 (6) RECOVERY AND RECOUPMENT.—

134 (e) The department shall collect the repayment of benefits
 135 without interest by any of the following methods: the deduction
 136 of benefits through a redetermination or by a civil action.

137 1. The deduction of reemployment assistance benefits
 138 through a redetermination.

139 2. The recovery of overpayments through attachment and
 140 garnishment as provided in chapters 76 and 77. An overpayment
 141 determination, decision, or order issued by the department or
 142 commission which has become final as provided in this section
 143 may be enforced by attachment or garnishment in the same manner
 144 as a judgment of any court of competent jurisdiction as provided
 145 in chapters 76 and 77 for a debt due. Upon application to the
 146 clerk of court by the department, a writ shall be issued by the
 147 clerk of court as upon a judgment of the court duly docketed and
 148 recorded. These writs must be returnable to the court. A bond

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 149 may not be required of the department as a condition for the
 150 issuance of a writ of attachment or a writ of garnishment.
 151 Issues raised under proceedings by attachment or garnishment
 152 must be tried by the court in the same manner as a judgment
 153 under chapters 76 and 77. Venue for attachment and garnishment
 154 proceedings originating under this section is in Leon County.

155 3. Any additional recovery method provided for by law.

156 Section 6. Paragraph (a) of subsection (1) of section
 157 895.02, Florida Statutes, is amended to read:

158 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

159 (1) "Racketeering activity" means to commit, to attempt to
 160 commit, to conspire to commit, or to solicit, coerce, or
 161 intimidate another person to commit:

162 (a) Any crime that is chargeable by petition, indictment,
 163 or information under the following provisions of the Florida
 164 Statutes:

165 1. Section 210.18, relating to evasion of payment of
 166 cigarette taxes.

167 2. Section 316.1935, relating to fleeing or attempting to
 168 elude a law enforcement officer and aggravated fleeing or
 169 eluding.

170 3. Section 403.727(3)(b), relating to environmental
 171 control.

172 4. Section 409.920 or s. 409.9201, relating to Medicaid
 173 fraud.

174 5. Section 414.39, relating to public assistance fraud.

175 6. Section 440.105 or s. 440.106, relating to workers'
 176 compensation.

177 7. Section 443.071(1) or (4) Section 443.071(4), relating

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178 to ~~creation of a fictitious employer scheme to commit~~
 179 reemployment assistance fraud.

180 8. Section 465.0161, relating to distribution of medicinal
 181 drugs without a permit as an Internet pharmacy.

182 9. Section 499.0051, relating to crimes involving
 183 contraband and adulterated drugs.

184 10. Part IV of chapter 501, relating to telemarketing.

185 11. Chapter 517, relating to sale of securities and
 186 investor protection.

187 12. Section 550.235 or s. 550.3551, relating to dogracing
 188 and horseracing.

189 13. Chapter 550, relating to jai alai frontons.

190 14. Section 551.109, relating to slot machine gaming.

191 15. Chapter 552, relating to the manufacture, distribution,
 192 and use of explosives.

193 16. Chapter 560, relating to money transmitters, if the
 194 violation is punishable as a felony.

195 17. Chapter 562, relating to beverage law enforcement.

196 18. Section 624.401, relating to transacting insurance
 197 without a certificate of authority, s. 624.437(4)(c)1., relating
 198 to operating an unauthorized multiple-employer welfare
 199 arrangement, or s. 626.902(1)(b), relating to representing or
 200 aiding an unauthorized insurer.

201 19. Section 655.50, relating to reports of currency
 202 transactions, when such violation is punishable as a felony.

203 20. Chapter 687, relating to interest and usurious
 204 practices.

205 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 206 real estate timeshare plans.

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207 22. Section 775.13(5)(b), relating to registration of
 208 persons found to have committed any offense for the purpose of
 209 benefiting, promoting, or furthering the interests of a criminal
 210 gang.

211 23. Section 777.03, relating to commission of crimes by
 212 accessories after the fact.

213 24. Chapter 782, relating to homicide.

214 25. Chapter 784, relating to assault and battery.

215 26. Chapter 787, relating to kidnapping or human
 216 trafficking.

217 27. Chapter 790, relating to weapons and firearms.

218 28. Chapter 794, relating to sexual battery, but only if
 219 such crime was committed with the intent to benefit, promote, or
 220 further the interests of a criminal gang, or for the purpose of
 221 increasing a criminal gang member's own standing or position
 222 within a criminal gang.

223 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 224 796.05, or s. 796.07, relating to prostitution.

225 30. Chapter 806, relating to arson and criminal mischief.

226 31. Chapter 810, relating to burglary and trespass.

227 32. Chapter 812, relating to theft, robbery, and related
 228 crimes.

229 33. Chapter 815, relating to computer-related crimes.

230 34. Chapter 817, relating to fraudulent practices, false
 231 pretenses, fraud generally, and credit card crimes.

232 35. Chapter 825, relating to abuse, neglect, or
 233 exploitation of an elderly person or disabled adult.

234 36. Section 827.071, relating to commercial sexual
 235 exploitation of children.

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20161216__

236 37. Section 828.122, relating to fighting or baiting
237 animals.

238 38. Chapter 831, relating to forgery and counterfeiting.

239 39. Chapter 832, relating to issuance of worthless checks
240 and drafts.

241 40. Section 836.05, relating to extortion.

242 41. Chapter 837, relating to perjury.

243 42. Chapter 838, relating to bribery and misuse of public
244 office.

245 43. Chapter 843, relating to obstruction of justice.

246 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
247 s. 847.07, relating to obscene literature and profanity.

248 45. Chapter 849, relating to gambling, lottery, gambling or
249 gaming devices, slot machines, or any of the provisions within
250 that chapter.

251 46. Chapter 874, relating to criminal gangs.

252 47. Chapter 893, relating to drug abuse prevention and
253 control.

254 48. Chapter 896, relating to offenses related to financial
255 transactions.

256 49. Sections 914.22 and 914.23, relating to tampering with
257 or harassing a witness, victim, or informant, and retaliation
258 against a witness, victim, or informant.

259 50. Sections 918.12 and 918.13, relating to tampering with
260 jurors and evidence.

261 Section 7. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

January 13, 2016

The Honorable Nancy Detert
Senate Commerce and Tourism Committee, Chair
416 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Detert:

I respectfully request that SB 1216, related to *Reemployment Assistance Fraud*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Todd McKay/ Staff Director
Patty Blackburn/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/14

Meeting Date

1216

Bill Number (if applicable)

Topic Unemployment Fraud

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronaugh St

Phone 850-521-1235

Street

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

1216

Bill Number (if applicable)

Topic 1216 - Reemployment Assistance Fraud

Amendment Barcode (if applicable)

Name Bill Wilson

Job Title Director of Legislative Affairs - DEO

Address Caldwell Building

Phone 850-245-7116

Street

Tallahassee

FL

32311

Email bill.wilson@deo.myflorida.com

City

State

Zip

Speaking: For Against Information

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

Representing DEO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SM 600

INTRODUCER: Senator Thompson

SUBJECT: Recognition of Haitian Independence Day, Haitian Flag Day, and Haitian Heritage Month

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aldana</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SM 600 urges Congress to recognize January 1st as “Haitian Independence Day,” May 18th as “Haitian Flag Day,” and the month of May as “Haitian Heritage Month.”

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are formal petitions to the federal government that generally request the Congress to act on a particular subject.

II. Present Situation:

Haiti’s Independence

Haiti is one-third of the island of Hispaniola, with a current population of approximately 10 million people.¹ Haiti’s culture is heavily influenced by West Africa, from which slaves were imported in the 18th century by Spanish and French colonizers to support the island’s agrarian economy. In 1789, Haiti had a total population of 520,000 individuals, 452,000 of whom were slaves.² From 1791 to 1804,³ Haitian slaves and free people of color led “the largest and most successful slave rebellion in the Western Hemisphere,”⁴ which ultimately resulted in Haitian freedom from colonial rule. The pinnacle of the Haitian Revolution occurred on May 18, 1803, when Jean-Jacques Dessalines, who would become the first president of an independent Haiti,⁵

¹ U.S. Central Intelligence Agency, *Haiti’s Country Profile: People and Society*, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Feb. 15, 2016).

² Helen Chapin-Metz, Federal Research Division of the Library of Congress, *Dominican Republic and Haiti: Country Studies*, 266 (2001), available at <http://www.loc.gov/resource/frdcstdy.dominicanrepubli00metz/?st=gallery> (last visited Feb. 15, 2016).

³ Chapin-Metz, *supra* note 2 at 268.

⁴ Black Past, *Haitian Revolution (1791-1804)*, available at: <http://www.blackpast.org/gah/haitian-revolution-1791-1804> (last visited Feb. 15, 2016).

⁵ Chapin-Metz, *supra* note 2, at 272.

led a newly formed coalition under a blue and red flag to victories against the French.⁶ Dessalines' flag would serve as the basis for the modern flag of Haiti. In honor of the creation of its original flag, Haiti celebrates Haitian Flag Day on May 18th every year.⁷

Haiti ultimately declared its independence on January 1, 1804, and as a result, Haiti's Independence Day is celebrated on January 1 of every year.

Haitians in the United States

Due in part to Haiti's close proximity to the United States, there are approximately 1.5 million people of Haitian descent living in this country.⁸ Florida has the highest population of Haitian immigrants in the U.S., at 280,000—most of whom reside in the greater Miami area.⁹ Haitians tend to be newer immigrants, with arrivals from Haiti peaking from 2000 to 2009.¹⁰

In recognition of the impact of Haitian culture and individuals on the United States, several resolutions have been introduced in the United States House of Representatives to recognize May as "Haitian American Heritage Month." For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never heard, during the 109th Congress.¹¹ House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but not heard, during the 113th Congress.¹²

Additionally, in 2005, President George Bush and Laura Bush posted a letter to congratulate Haitian-Americans on the heroic accomplishments of their ancestors.¹³ In 2010, President Obama recognized the importance of May's Haitian American Heritage Month by making a special presentation at the White House, lauding Haiti's contribution to the worlds of nations.¹⁴ On May 17, 2010, President Obama also welcomed the largest contingency of Haitian-American leaders at the White House for a Haitian Flag Day celebration.¹⁵

⁶ Biography.com, *Jean-Jacques Dessalines*, available at <http://www.biography.com/people/jean-jacques-dessalines-9273005> (last visited Feb. 15, 2016).

⁷ South Florida Times, *Caribbean Crossroads: May is Haitian Heritage Month* (May 21, 2010) available at <http://www.sfltimes.com/uncategorized/caribbean-crossroads-may-is-haitian-heritage-month> (last visited Feb. 15, 2016).

⁸ U.S. Census Bureau, *2013 & 2014 American Community Survey*.

⁹ Miami-Dade and Broward County combined have a total of 151,700 Haitian immigrants. Migration Policy Institution, U.S. *Immigrant Population by State and County*, (2009-2013) available at: <http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county?width=1000&height=850&iframe=true> (last visited Feb. 15, 2016).

¹⁰ Kristen McCabe, *Caribbean Immigrants in the United States*, (April 2011) available at: <http://www.migrationpolicy.org/article/caribbean-immigrants-united-states> (last visited Feb. 15, 2016).

¹¹ H.R. 777, 109th Congress (2006), available at: <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%3A%5B%22777%22%5D%7D&resultIndex=42> (last visited Feb. 15, 2016).

¹² H.R. 224, 113th Congress (2013), available at: <https://www.congress.gov/bill/113th-congress/house-resolution/224> (last visited Feb. 15, 2016).

¹³ South Florida Times, *supra* note 7.

¹⁴ *Id.*

¹⁵ Black Past, *supra* note 4.

Miami-Dade County passed a resolution designating May as “Haitian Cultural Heritage Month,” and has held annual celebrations since.¹⁶ Similarly, the Palm Beach County School District adopted a resolution recognizing May as Haitian Heritage Month.¹⁷

Recognition of Cultural Heritage in the United States

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, as a result of Congressional action, February is recognized as National African American History Month, November as “American Indian Heritage Month,” May as “Jewish American Heritage Month,” May as “Asian Pacific Heritage Month,” and September 15th through October 15th as “National Hispanic Heritage Month.”¹⁸

III. Effect of Proposed Changes:

SM 600 urges the U.S. Congress to recognize January 1 of each year as “Haitian Independence Day,” May 18th of each year as “Haitian Flag Day,” and the month of May of each year as “Haitian Heritage Month.”

Copies of the memorial are dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation of the United States Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Miami Dade County, Resolution Reallocating \$35,000 to the Haitian American Foundation for Support of Haitian Cultural Heritage Month- May 2001, available at:

<http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (last visited Feb. 15, 2016); see also Miami-Dade County, *Haitian Cultural Heritage Month kicks off on May 1*, (Apr. 24, 2015) available at: <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (last visited Feb. 15, 2016).

¹⁷ See, School District of Palm Beach County, Office of Communications, *Palm Beach County to Celebrate Haitian Heritage During the Month of May*, April 11, 2011, available at: <https://news.palmbeachschools.org/pao/2011/04/11/palm-beach-county-to-celebrate-haitian-heritage-during-the-month-of-may/> (last visited Feb. 15, 2016).

¹⁸ See Library of Congress, Commemorative Observances, available at: <http://www.loc.gov/law/help/commemorative-observations/index.php> (last visited Feb. 15, 2016).

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:

None.

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 Thompson

12-00754-16

2016600__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to annually recognize January 1 as "Haitian Independence Day," May 18 as "Haitian Flag Day," and the month of May as "Haitian Heritage Month."

WHEREAS, the Republic of Haiti, an island nation located in the West Indies on the western third of the Island of Hispaniola, declared its independence from French colonial rule on January 1, 1804, following a slave revolt under the leadership of Generals Toussaint L'Ouverture, Jean-Jacques Dessalines, and Alexandre Pétion, becoming the first and only state created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin America and the first post-colonial independent nation led by blacks in the world, and

WHEREAS, Haitian Independence Day is globally acknowledged and annually celebrated on January 1 as an affirmation of equality, freedom, and the abolition of slavery, and

WHEREAS, the Haitian flag known today, a variant of which first came into use in 1806, is emblazoned with the country's coat of arms and the colors red and blue, adopted from the flag of France, the country from which Haiti gained its independence, and

WHEREAS, General Jean-Jacques Dessalines is regarded as the father of the Haitian flag, known to have dramatically cut the French tricolor with his saber at the May 1803 Arcahaie conference, ripping away the white of the French flag to

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12-00754-16

2016600__

symbolize an end to European influence and leaving two strips that Catherine Flon then sewed back together: the blue, which represented the former African slaves brought to Haiti by colonial powers, and the red, which symbolized a people of mixed ancestry, and

WHEREAS, the Haitian flag is a definitive symbol of pride for the Caribbean nation, having become the second republic, after the United States, to defeat a European colonial power in the Americas, and

WHEREAS, Haitian Flag Day events are annually observed and celebrated with pride and enthusiasm throughout the United States, and

WHEREAS, Haitian Heritage Month is a jubilant celebration in the United States, embracing Haitian heritage and culture, and

WHEREAS, first celebrated in Boston, Massachusetts, in 1998, Haitian Heritage Month is observed nationwide in the month of May from Florida to New York with parades, festivals, and school activities, and

WHEREAS, the importance of Haitian Heritage Month is exemplified by South Florida Congressman Kendrick B. Meek's introduction of a bill in the United States House of Representatives in 2004 and 2006 to recognize the month of May as Haitian Heritage Month, by former President George W. Bush and First Lady Laura Bush's letter, sent in May 2005, to congratulate the Haitian-American community on the occasion of the heritage month, and by the organization of a celebration at the White House that same year, and

WHEREAS, as educators, authors, community leaders,

Page 2 of 4

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12-00754-16

2016600__

59 activists, athletes, artists, musicians, and politicians,
 60 Haitians and Haitian Americans have left an indelible mark on
 61 every facet of this nation's society and the world, evidenced by
 62 the accomplishments of such icons as Jean Baptiste Point du
 63 Sable, founder of the City of Chicago; civil rights activist
 64 W.E.B. Du Bois; National Football League player Pierre Garçon;
 65 author and candidate for the Nobel Prize for Literature in 2009,
 66 Frankétienne; and Tony Award-winning actress and singer Nikki M.
 67 James, and

68 WHEREAS, the close proximity of Haitian and American
 69 shores, in conjunction with our countries' common bond of mutual
 70 values and commitment to democracy, ensures lasting comity of
 71 nations and continued trade and diplomatic relations, and

72 WHEREAS, with an estimated 1.5 million persons of Haitian
 73 descent now residing in the United States, it is important to
 74 acknowledge the positive impact of Haitian Americans in their
 75 contribution to the betterment and diversity of this country,
 76 and

77 WHEREAS, the United States and Haiti share a history of
 78 freedom, a common belief in human rights, and diverse, complex,
 79 and resilient peoples who have impacted the world through
 80 vibrant cultures, democracy, and a wealth of talent and
 81 achievement, and

82 WHEREAS, Haitian Independence Day, Haitian Flag Day, and
 83 Haitian Heritage Month are each observed to salute the Haitian
 84 and Haitian-American communities and to exhibit appreciation for
 85 their culture and heritage, which have immeasurably enriched the
 86 lives of the people of this nation, NOW, THEREFORE,
 87

Page 3 of 4

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12-00754-16

2016600__

88 Be It Resolved by the Legislature of the State of Florida:

89
 90 That the Congress of the United States is urged to
 91 recognize January 1 of each year as "Haitian Independence Day,"
 92 May 18 of each year as "Haitian Flag Day," and the month of May
 93 of each year as "Haitian Heritage Month" and to encourage the
 94 people of the United States to observe these occasions with
 95 appropriate ceremonies, celebrations, and activities.

96 BE IT FURTHER RESOLVED that copies of this memorial be
 97 dispatched to the President of the United States, to the
 98 President of the United States Senate, to the Speaker of the
 99 House of Representatives, and to each member of the Florida
 100 delegation to the United States Congress.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

RECEIVED

JAN 12 2016

COMMERCE

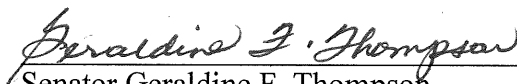
To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 11, 2016

I respectfully request that **Senate Memorial # 600**, relating to Recognition of Haitian Independence Day, Haitian Flag Day, And Haitian Heritage Month, be placed on the:

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



Senator Geraldine F. Thompson
Florida Senate, District 12

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-16

Meeting Date

0600

Bill Number (if applicable)

Topic haitian Independence day

Amendment Barcode (if applicable)

Name Beverly Glenn

Job Title 4466 Great Harbor

Address Bus Operator

Phone 407-913-3877

Street

Kissimmee Fl 347-46

City

State

Zip

Email Beverly3@gnq.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16
Meeting Date

0600
Bill Number (if applicable)

Topic Haitian Independence

Amendment Barcode (if applicable)

Name Christine Saint Louis

Job Title Bus operator

Address 2319 Meadow oak cir
Street

Phone 407-756-0334

Kissimmee FL 34746
City State Zip

Email byersgirl@hotmail.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Commerce and Tourism

BILL: CS/SB 1156

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Community Development Districts

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1156 revises the acreage size requirements that determine the track that a prospective Community Development District (CDD) must undertake as it seeks to become established. The bill also makes explicit that a CDD is empowered to contract with a towing operator to remove a vehicle or vessel from a CDD-owned facility or property. The bill also provides a new process for the merger of CDDs—permitting up to five CDDs to combine into one surviving CDD, providing the composition for the surviving CDD board of supervisors, and providing other requirements for merger.

II. Present Situation:

Community Development Districts

Community Development Districts are special-purpose units of local government established to help Florida development and growth “pay for itself” by providing infrastructure and services for new and existing communities when such infrastructure and services would not otherwise be available from other local, general-purpose governments like counties and municipalities.¹ CDDs serve as an alternative means of financing, constructing, acquiring, operating, and maintaining public infrastructure improvements to communities throughout Florida such as roads, utilities,

¹ Jere L. Earlywine and Katie S. Buchanan, *The Role of Community Development Districts In Florida*, Florida Environmental and Land Use Law Treatise 25.10-1 (2015).

hardscaping, landscaping, streetlights, stormwater infrastructure, conservation and mitigation areas, recreation facilities, and various other improvements allowed by statute.²

Creation of CDDs

There are two different tracks for the establishment of a CDD: one for CDDs with 1,000 acres or more, and one for CDDs with less than 1,000 acres. CDDs of 1,000 acres or more are reviewed at a state and local level and are established by administrative rule. Smaller CDDs of less than 1,000 acres are reviewed at a local level and established by ordinance, though local governments may refer a petition for a smaller CDD to the state for processing.

CDDs of 1,000 Acres or More in Size³

In order to establish a CDD of 1,000 acres or more, a petition must be filed with the Florida Land and Water Adjudicatory Commission (FLWAC). The FLWAC consists of the Governor and Cabinet, and is established under s. 380.07, F.S. The FLWAC's duties generally require it to act to implement statutory responsibilities to protect Florida's natural resources and environment. This includes review of issues regarding water management decisions, state land acquisition, Areas of Critical State Concern, and developments of regional impact, in addition to creation and dissolution of CDDs.⁴

An establishment petition must be filed with the FLWAC and contain all of the following:⁵

- A metes and bounds description of the external boundaries of the CDD;
- The written consent to the establishment of the CDD by all landowners whose real property is to be included in the CDD;
- A designation of five persons to be the initial members of the board of supervisors, who must serve in that office until replaced by elected members as provided in s. 190.006, F.S.;
- The proposed name of the CDD;
- A map of the proposed district showing current major trunk water mains and sewer inceptors and outfalls, if in existence;
- Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services;
- A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the CDD; and
- A statement of estimated regulatory costs in accordance with the requirements of s. 120.541, F.S.

Before filing the petition, a petitioner must pay a \$15,000 filing fee to each of the municipalities or counties in which the CDD would be located.⁶ After the petition is filed, a local public hearing on the petition is conducted pursuant to the Administrative Procedure Act, ch. 120, F.S., in the

² *Id.*

³ Section 190.005, F.S.

⁴ Florida Land and Water Adjudicatory Commission, Statement of Agency Organization and Operation, (Dec. 2015) available at: <http://www.myflorida.com/myflorida/cabinet/flwac/flwac.pdf> (last visited Feb. 15, 2016).

⁵ Section 190.005(1)(a), F.S.

⁶ Section 190.005(1)(b), F.S.

county where the proposed CDD would be located.⁷ This hearing is conducted by an administrative law judge selected by the Division of Administrative Hearings (DOAH). The petitioner is required to publish notice of the hearing in a newspaper of paid general circulation for 4-consecutive weeks immediately before the hearing and the notice must identify the date, time, and location of the hearing and describe the area to be included in the CDD, along with other applicable information.⁸ All units of general-purpose local government which are affected and the general public must be given an opportunity to appear at the hearing and be given the ability to make oral or written comments on the petition.⁹ Furthermore, each affected county and municipality is authorized to conduct its own public hearing to recommend whether the petition should be granted or denied by the FLWAC, but the hearing must take place before the DOAH hearing and must be concluded within 45 days after the petition is filed.¹⁰ After such a hearing, the county or municipality may adopt a resolution expressing its support of, or objection to, the granting of the petition by the FLWAC.¹¹

The administrative law judge presiding over the DOAH hearing will prepare a report and recommendation to the FLWAC.¹² In determining whether to grant or deny an establishment petition, the FLWAC is required to consider the entire record from the local DOAH hearing, the transcript from the hearing, any resolutions adopted by counties or municipalities addressing the petition, and must ultimately make a determination after considering each of the factors set forth in s. 190.005(1)(e), F.S.

CDDs Less Than 1,000 Acres in Size

For a CDD less than 1,000 acres in size, the petition is filed with the county or municipality in which the CDD would be located and must contain the same information as a petition filed with the FLWAC.¹³ However, municipalities and counties may impose additional petition requirements through policymaking or ordinance. Some municipalities and counties have also set their own filing fees, which are generally due at the time of filing.¹⁴

Petitions to establish a CDD less than 1,000 acres in size are processed similarly to the FLWAC petitions with a few exceptions. The petition must contain the same elements as a FLWAC petition, but the petition is submitted to the municipality or county in which the proposed CDD would be located rather than the FLWAC.¹⁵ Furthermore, instead of a DOAH hearing, the municipality or county must conduct its own public hearing using the same requirements and procedures—i.e., the hearing must be held in the municipality or county in which the CDD would be located, must be noticed for 4-consecutive weeks in a newspaper of general circulation, and must allow all affected units of general-purpose local government and the general public an opportunity to appear at the hearing and present oral or written comments.¹⁶ As is the case with

⁷ Section 190.005(1)(d), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 190.005(1)(c), F.S.

¹¹ *Id.*

¹² Section 190.005(1)(d), F.S.; Section 120.57(k), F.S.

¹³ Section 190.005(2), F.S.

¹⁴ *Earlywine and Buchanan, supra* note 1, at 25.10-5.

¹⁵ Section 190.005(2), F.S.

¹⁶ Section 190.005(2)(b), F.S.

the FLWAC, the municipality or county commission must consider the entire record of the public hearing and the factors set forth in s. 190.005(1)(e), F.S., to determine whether to grant the petition.¹⁷ Any ordinance adopted by a municipality or county establishing a CDD may only contain those matters permitted to be included in a FLWAC rule as set forth in s. 190.005(1)(f), F.S., unless the county or municipality consents to any of the optional powers under s. 190.012, F.S.¹⁸

Powers of the CDD

CDDs are local units of special-purpose government that have limited authority, subject to the powers and duties enumerated in ch. 190, F.S.¹⁹

The CDD's general powers²⁰ include:

- The power to sue and be sued;
- The ability to contract for specific services, pursuant to the public bidding requirements of s. 190.033, F.S.;
- The authority to adopt rules and orders pursuant to ch. 120, F.S., that describe the powers, duties, and functions of the district's officers; the conduct of the district's business; the maintenance of records; and the form of certificates that evidence tax liens and all of the CDD's other documents and records;
- The right to raise user charges or fees, subject to board approval, in instances in which the money is necessary for the conduct of the district's activities and services, to assess ad valorem taxes pursuant to ch. 190, F.S., and to levy special assessments pursuant to ch. 170, F.S.; and
- To cooperate with, or contract with, other governmental agencies, in connection with any of the powers, duties, or purposes authorized by ch. 190, F.S.

If a CDD wants any of the special powers enumerated in s. 190.012, F.S.,²¹ it must request such powers from the local general-purpose government within the jurisdiction of which they are to be exercised. The CDD's special powers²² include the powers to finance, construct, acquire, operate and maintain the following:

- Water management and control;
- Road and roadway improvements, such as street lights, landscaping, and placement of electric utility lines underground;
- Construction of parks and facilities for recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security, including, but not limited to, construction of guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars.

¹⁷ Section 190.005(2)(c), F.S.

¹⁸ Section 190.005(2)(d), F.S.

¹⁹ *See, e.g.*, ss. 190.03(6), 190.011, and 190.012, F.S.

²⁰ Section 190.011, F.S.

²¹ Such powers include the ability to finance, construct, acquire, operate, and maintain parks and facilities for certain uses; fire prevention and control; school buildings and related structures; security; control and elimination of mosquitoes; and waste collection and disposal. Section 190.012(2), F.S.

²² Section 190.012, F.S.

Removal of Abandoned Property

Cities and municipalities may remove abandoned property, in accordance with their local codes and ordinances, pursuant to s. 705.1015, F.S. Private property owners, including condominiums and businesses, may have a vehicle or vessel towed from their property in accordance with s. 715.07, F.S., which requires notice of the applicable towing company in the location from which the vehicle was towed, storage of the towed vehicle within a specific radius of its towed location, and availability of the vehicle during regular business hours, or within 1 hour of request for retrieval. In addition, the towing company must give notice of the removed vehicle to municipal police or the sheriff within 30 minutes after removal.²³

Because ch. 190, F.S., does not specifically enumerate a power to tow abandoned vehicles, it is unclear whether CDDs currently have the ability to contract with a tow truck operator to remove vehicles from CDD-owned property.

Boundary Amendments

A CDD may amend its boundaries after it has been established. Section 190.046, F.S., governs this process. A boundary amendment petition must contain a metes and bounds description of the boundaries of the CDD, and a statement of estimated regulatory costs.²⁴ If the petitioner seeks to expand the CDD area, the petition must describe “the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government local comprehensive plan.”²⁵ If the petitioner seeks to contract the CDD, the petition must describe “what services and facilities are currently provided by the district to the area being removed, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land element of the adopted local government comprehensive plan.”²⁶ Generally, the boundary amendment petition must be filed with the entity that established the CDD.²⁷

If the FLWAC established the CDD, the boundary amendment petition must be filed with the FLWAC.²⁸ The petitioner must pay a filing fee of \$1,500 to the county if the CDD or the land to be added to or deleted from the CDD is located within an unincorporated area, or to the municipality if the CDD or the land to be added to or deleted from the CDD is located within an incorporated area, and to each municipality the boundaries of which are contiguous with or contain all or a portion of the land within or to be added to or deleted from the external boundaries of the CDD.²⁹

²³ Section 715.07(2)(a)2, F.S.

²⁴ Section 190.046(1)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 190.046(1)(b) and (c), F.S.

²⁸ Section 190.046(1)(d), F.S.

²⁹ *Id.*

Each county and municipality has the opportunity to hold a public hearing as provided in s. 190.005(1)(c), F.S.³⁰ However, the public hearing shall be limited to consideration of the contents of the petition and whether the petition for amendment should be supported by the county or municipality. Within 45 days after the conclusion of the public hearing, the CDD board of supervisors must transmit to the FLWAC the full record of the local hearing, the transcript of the hearing, any resolutions adopted by the local general-purpose governments, and its recommendation stating whether to grant the petition for amendment.³¹ The FLWAC must then determine whether to grant the petition based on the criteria used for establishment of CDDs, as set forth in s. 190.005(1)(e), F.S.³²

For CDDs established by the FLWAC, a boundary amendment may not result in a cumulative net total greater than 10 percent of the land in the initial CDD and in no event greater than 250 acres on a cumulative net basis.³³ For a CDD established by a municipality or a county, a boundary amendment may not result in a cumulative net total greater than 50 percent of the land in the initial CDD and in no event greater than 500 acres on a cumulative net basis.³⁴ If the boundary amendment exceeds these criteria, the boundary amendment petition may still proceed but it is processed in accordance with s. 190.005, F.S., which has additional requirements including additional notice similar to that necessary for a new establishment. Any resulting administrative rule or ordinance may only amend the boundaries of the CDD; it does not result in the establishment of a new CDD or a change to the CDD election timeframes.³⁵

In all cases of a petition to amend the boundaries of a CDD, the filing of the petition by the CDD constitutes consent of the landowners within the amended CDD.³⁶ As a result, the only other consent necessary for a boundary amendment is the written consent of those landowners whose land is to be added to or removed from the CDD.³⁷

Merger of CDDs

A CDD may merge with other community development districts upon filing a petition for merger, which must include the elements set forth in s. 190.005(1), F.S., and which must be evaluated pursuant to the criteria set forth in s. 190.005(1)(e), F.S.³⁸ The petition must state whether a new district is to be established or whether one district must be the surviving district. The district may merge with any other special districts upon filing a petition of establishment of a CDD pursuant to s. 190.005, F.S. The government formed by a merger involving a CDD is required to assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property are not impaired by such merger. Any claim existing or action or proceeding pending by or against any CDD that is a party to the merger must enter into a merger agreement and must provide for the proper allocation of the indebtedness and the manner in which such debt is retired. The approval of the

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 190.046(1)(e), F.S.

³⁴ *Id.*

³⁵ Section 190.005(1)(f), F.S.

³⁶ Section 190.005(1)(g), F.S.

³⁷ *Id.*

³⁸ Section 190.046(3), F.S.

merger agreement and the petition by the board of supervisors of the CDD constitutes consent of the landowners within the district.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 190.005, F.S., revising the criteria for determining which process a proposed CDD must undertake in order to become established. A CDD of 2,500 acres or more, rather than 1,000 acres or more, is now required to petition the FLWAC for the establishment of a CDD. On the other hand, CDDs with less than 2,500 acres will now petition the county or municipality in which the CDD would be located.

Section 2 amends s. 190.012, F.S., providing that a CDD is not prohibited from contracting with a towing operator to remove a vehicle or vessel from a district-owned facility or property. This is despite the provision in s. 190.012(2)(d), F.S., which requires prior consent from the local general-purpose government in order for a CDD to “have the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for...security.” When removing a vehicle or vessel from a CDD-owned facility or property, the CDD has the same authorization and is subject to the same notice and procedural requirements as provided in s. 715.07, F.S., for the owner or lessee of private property. The selection of a towing operator by a CDD is not subject to public bidding if the towing operator is included in an approved list of towing operators maintained by the local government that has jurisdiction over the CDD facility or property.

Section 3 amends s. 190.046, F.S., revising the process for amending CDD boundaries. For CDDs established by the FLWAC, the limitation on boundary amendments is raised from a maximum cumulative net total no greater than 10 percent of the initial land and no greater than 250 acres on a cumulative net basis to no greater than 50 percent of the initial land and no greater than 1,000 acres on a cumulative net basis. For municipality- or county-established CDDs, the limitation is raised from no greater than 500 acres on a cumulative net basis of the initial land to no greater than 1,000 acres on a cumulative net basis. The 50 percent maximum in current law does not change for CDDs established by county or municipal ordinance.

The bill also provides that up to five CDDs whose boards of supervisors are composed entirely of qualified electors and established by the same local general-purpose government may merge into one surviving district through adoption of an ordinance by the local general-purpose government, regardless of the size of the surviving merged district. The filing of a petition by the majority of the members of each of the district board of supervisors seeking to merge constitutes consent of the landowners within each applicable district.

The merger agreement entered into between the district boards must meet the requirements in s. 190.046(3), F.S., and must also meet the following requirements:

- The surviving merged district board must consist of five elected board members.
- Each at-large board seat must represent the entire geographic area of the surviving merged district.

³⁹ *Id.*

- Each CDD that seeks to merge is entitled to a fair allocation of board membership to represent the districts being merged. To that end:
 - If two districts merge, two board members shall be elected from each of the districts and one board member shall be elected at-large.
 - If three districts merge, one board member shall be elected from each of the three districts and two board members shall be elected at-large.
 - If four districts merge, one board member shall be elected from each of the four districts and one board member shall be elected at-large.
 - If five districts merge, one board member shall be elected from each of the five districts.
- The election of district supervisors for the surviving merged district must be held at the next general election following the merger, at which time all terms of preexisting supervisors must end and the merger shall be legally in effect.
- Before filing a petition to merge by ordinance of the local general-purpose government, each district proposing to merge must hold a public hearing within its district for the purpose of providing information about and taking public comment on the proposed merger, merger agreement, and assignment of district supervisor seats on the surviving merged district board. Notice of the hearing must be published at least 14 days before the hearing. If, after the public hearing, a district board decides that it no longer wants to merge and cancels the merger agreement, the remaining districts must each hold another public hearing on the revised merger agreement. A petition to merge may not be filed for at least 30 days after the last public hearing held by the districts proposing to move.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The merger of CDDs may result in administrative cost savings which may be passed on to residents.

C. Government Sector Impact:

The FLWAC may see fewer applications for the establishment of a CDD, and counties and municipalities may see more applications, as CDDs between 1,000 and 2,499 acres will apply to the county or municipality in which it is to be located rather than the FLWAC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 exempts CDDs that choose a towing operator from their local government's list of approved towing operators from public bidding requirements. It is unclear if this is an exemption from s. 190.033(3), F.S., which subjects contracts for maintenance services over \$195,000 for any CDD facility or project to competitive solicitation requirements, and exempts contracts for "other services" from competitive solicitation unless the CDD adopts a rule, policy, or procedure that states otherwise.

If "competitive solicitation" under s. 190.033, F.S., includes "public bidding," an exemption for towing services of abandoned vehicles from s. 190.033, F.S., may be unnecessary. It is unlikely that the towing permitted under the bill, if considered a maintenance contract, would result in costs in excess of \$195,000. If the towing services are considered "other services," then they are already exempt from 190.033, F.S., barring a CDD's rule, policy, or procedure stating otherwise.

Ultimately, the exemption as drafted may require CDDs to subject the selection of a towing operator who is not on a local government's list of approved towing operators to unspecified public bidding requirements.

VIII. Statutes Affected:

This bill substantially amends sections 190.005, 190.012, and 190.046 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Community Affairs on January 19, 2016:

Restores the requirement in current law that a petitioner publish notice of the hearing for the establishment of a CDD in a newspaper of paid general circulation for 4 consecutive weeks immediately before the hearing. In addition, provisions regarding merger are conformed to HB 971 with the only substantive changes being the removal of a provision

regarding the possibility of a second merger and the additional requirement that each at-large board seat after merger represent the entire geographic area of the surviving merged district.

B. Amendments:

None.

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

By the Committee on Community Affairs; and Senator Hutson

578-02304-16

20161156c1

1 A bill to be entitled
 2 An act relating to community development districts;
 3 amending s. 190.005, F.S.; increasing minimum size
 4 requirements for the establishment of a community
 5 development district under certain circumstances;
 6 increasing maximum size requirements for the
 7 establishment of community development districts under
 8 certain circumstances; providing certain petition
 9 requirements if all of the land in the area for a
 10 proposed district is within the territorial
 11 jurisdiction of two or more counties; conforming a
 12 provision to changes made by the act; amending s.
 13 190.012, F.S.; providing that a district is not
 14 prohibited from contracting with a towing operator to
 15 remove vehicles or vessels from specified facilities
 16 or properties, subject to certain requirements;
 17 amending s. 190.046, F.S.; revising requirements
 18 related to the process of amending community
 19 development district boundaries; authorizing up to a
 20 certain number of districts to merge into one
 21 surviving district, subject to certain requirements;
 22 providing requirements of the merger agreement;
 23 providing for membership of the surviving merged
 24 district board; providing for public hearings subject
 25 to certain requirements; prohibiting a petition to
 26 merge from being filed within a specified timeframe;
 27 conforming cross-references; providing an effective
 28 date.

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

30 Section 1. Subsections (1) and (2) of section 190.005,
 31
 32

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

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33 Florida Statutes, are amended to read:

34 190.005 Establishment of district.—

35 (1) The exclusive and uniform method for the establishment
 36 of a community development district with a size of 2,500 ~~1,000~~
 37 acres or more shall be pursuant to a rule, adopted under chapter
 38 120 by the Florida Land and Water Adjudicatory Commission,
 39 granting a petition for the establishment of a community
 40 development district.

41 (a) A petition for the establishment of a community
 42 development district shall be filed by the petitioner with the
 43 Florida Land and Water Adjudicatory Commission. The petition
 44 shall contain:

45 1. A metes and bounds description of the external
 46 boundaries of the district. Any real property within the
 47 external boundaries of the district which is to be excluded from
 48 the district shall be specifically described, and the last known
 49 address of all owners of such real property shall be listed. The
 50 petition shall also address the impact of the proposed district
 51 on any real property within the external boundaries of the
 52 district which is to be excluded from the district.

53 2. The written consent to the establishment of the district
 54 by all landowners whose real property is to be included in the
 55 district or documentation demonstrating that the petitioner has
 56 control by deed, trust agreement, contract, or option of 100
 57 percent of the real property to be included in the district, and
 58 when real property to be included in the district is owned by a
 59 governmental entity and subject to a ground lease as described
 60 in s. 190.003(14), the written consent by such governmental
 61 entity.

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62 3. A designation of five persons to be the initial members
63 of the board of supervisors, who shall serve in that office
64 until replaced by elected members as provided in s. 190.006.

65 4. The proposed name of the district.

66 5. A map of the proposed district showing current major
67 trunk water mains and sewer interceptors and outfalls if in
68 existence.

69 6. Based upon available data, the proposed timetable for
70 construction of the district services and the estimated cost of
71 constructing the proposed services. These estimates shall be
72 submitted in good faith but are not binding and may be subject
73 to change.

74 7. A designation of the future general distribution,
75 location, and extent of public and private uses of land proposed
76 for the area within the district by the future land use plan
77 element of the effective local government comprehensive plan of
78 which all mandatory elements have been adopted by the applicable
79 general-purpose local government in compliance with the
80 Community Planning Act.

81 8. A statement of estimated regulatory costs in accordance
82 with the requirements of s. 120.541.

83 (b) ~~Before~~ Prior to filing the petition, the petitioner
84 shall:

85 1. Pay a filing fee of \$15,000 to the county, if located
86 within an unincorporated area, or to the municipality, if
87 located within an incorporated area, and to each municipality
88 the boundaries of which are contiguous with, or contain all or a
89 portion of the land within, the external boundaries of the
90 district.

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91 2. Submit a copy of the petition to the county, if located
92 within an unincorporated area, or to the municipality, if
93 located within an incorporated area, and to each municipality
94 the boundaries of which are contiguous with, or contain all or a
95 portion of, the land within the external boundaries of the
96 district.

97 3. If land to be included within a district is located
98 partially within the unincorporated area of one or more counties
99 and partially within a municipality or within two or more
100 municipalities, pay a \$15,000 filing fee to each entity.
101 Districts established across county boundaries shall be required
102 to maintain records, hold meetings and hearings, and publish
103 notices only in the county where the majority of the acreage
104 within the district lies.

105 (c) Such county and each such municipality required by law
106 to receive a petition may conduct a public hearing to consider
107 the relationship of the petition to the factors specified in
108 paragraph (e). The public hearing shall be concluded within 45
109 days after the date the petition is filed unless an extension of
110 time is requested by the petitioner and granted by the county or
111 municipality. The county or municipality holding such public
112 hearing may by resolution express its support of, or objection
113 to the granting of, the petition by the Florida Land and Water
114 Adjudicatory Commission. A resolution must base any objection to
115 the granting of the petition upon the factors specified in
116 paragraph (e). Such county or municipality may present its
117 resolution of support or objection at the Florida Land and Water
118 Adjudicatory Commission hearing and shall be afforded an
119 opportunity to present relevant information in support of its

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120 resolution.

121 (d) A local public hearing on the petition shall be
 122 conducted by a hearing officer in conformance with the
 123 applicable requirements and procedures of the Administrative
 124 Procedure Act. The hearing shall include oral and written
 125 comments on the petition pertinent to the factors specified in
 126 paragraph (e). The hearing shall be held at an accessible
 127 location in the county in which the community development
 128 district is to be located. The petitioner shall cause a notice
 129 of the hearing to be published in a newspaper at least once a
 130 week for the 4 successive weeks immediately before ~~prior to~~ the
 131 hearing. Such notice shall give the time and place for the
 132 hearing, a description of the area to be included in the
 133 district, which description shall include a map showing clearly
 134 the area to be covered by the district, and any other relevant
 135 information which the establishing governing bodies may require.
 136 The advertisement shall not be placed in that portion of the
 137 newspaper where legal notices and classified advertisements
 138 appear. The advertisement shall be published in a newspaper of
 139 general paid circulation in the county and of general interest
 140 and readership in the community, not one of limited subject
 141 matter, pursuant to chapter 50. If ~~Whenever~~ possible, the
 142 advertisement shall appear in a newspaper that is published at
 143 least 5 days a week, unless the only newspaper in the community
 144 is published fewer than 5 days a week. In addition to being
 145 published in the newspaper, the map referenced above must be
 146 part of the online advertisement required pursuant to s.
 147 50.0211. All affected units of general-purpose local government
 148 and the general public shall be given an opportunity to appear

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149 at the hearing and present oral or written comments on the
 150 petition.

151 (e) The Florida Land and Water Adjudicatory Commission
 152 shall consider the entire record of the local hearing, the
 153 transcript of the hearing, resolutions adopted by local general-
 154 purpose governments as provided in paragraph (c), and the
 155 following factors and make a determination to grant or deny a
 156 petition for the establishment of a community development
 157 district:

158 1. Whether all statements contained within the petition
 159 have been found to be true and correct.

160 2. Whether the establishment of the district is
 161 inconsistent with any applicable element or portion of the state
 162 comprehensive plan or of the effective local government
 163 comprehensive plan.

164 3. Whether the area of land within the proposed district is
 165 of sufficient size, is sufficiently compact, and is sufficiently
 166 contiguous to be developable as one functional interrelated
 167 community.

168 4. Whether the district is the best alternative available
 169 for delivering community development services and facilities to
 170 the area that will be served by the district.

171 5. Whether the community development services and
 172 facilities of the district will be incompatible with the
 173 capacity and uses of existing local and regional community
 174 development services and facilities.

175 6. Whether the area that will be served by the district is
 176 amenable to separate special-district government.

177 (f) The Florida Land and Water Adjudicatory Commission

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

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178 shall not adopt any rule which would expand, modify, or delete
 179 any provision of the uniform community development district
 180 charter as set forth in ss. 190.006-190.041, except as provided
 181 in s. 190.012. A rule establishing a community development
 182 district shall only contain the following:

183 1. A metes and bounds description of the external
 184 boundaries of the district and any real property within the
 185 external boundaries of the district which is to be excluded.

186 2. The names of five persons designated to be the initial
 187 members of the board of supervisors.

188 3. The name of the district.

189 (g) The Florida Land and Water Adjudicatory Commission may
 190 adopt rules setting forth its procedures for considering
 191 petitions to establish, expand, modify, or delete uniform
 192 community development districts or portions thereof consistent
 193 with the provisions of this section.

194 (2) The exclusive and uniform method for the establishment
 195 of a community development district of less than 2,500 ~~1,000~~
 196 acres in size or a community development district of up to 7,000
 197 acres in size located within a connected-city corridor
 198 established pursuant to s. 163.3246(14) shall be pursuant to an
 199 ordinance adopted by the county commission of the county having
 200 jurisdiction over the majority of land in the area in which the
 201 district is to be located granting a petition for the
 202 establishment of a community development district as follows:

203 (a) A petition for the establishment of a community
 204 development district shall be filed by the petitioner with the
 205 county commission. The petition shall contain the same
 206 information as required in paragraph (1)(a).

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207 (b) A public hearing on the petition shall be conducted by
 208 the county commission in accordance with the requirements and
 209 procedures of paragraph (1)(d).

210 (c) The county commission shall consider the record of the
 211 public hearing and the factors set forth in paragraph (1)(e) in
 212 making its determination to grant or deny a petition for the
 213 establishment of a community development district.

214 (d) The county commission shall not adopt any ordinance
 215 which would expand, modify, or delete any provision of the
 216 uniform community development district charter as set forth in
 217 ss. 190.006-190.041. An ordinance establishing a community
 218 development district shall only include the matters provided for
 219 in paragraph (1)(f) unless the commission consents to any of the
 220 optional powers under s. 190.012(2) at the request of the
 221 petitioner.

222 (e) If all of the land in the area for the proposed
 223 district is within the territorial jurisdiction of a municipal
 224 corporation, then the petition requesting establishment of a
 225 community development district under this act shall be filed by
 226 the petitioner with that particular municipal corporation. In
 227 such event, the duties of the county, hereinabove described, in
 228 action upon the petition shall be the duties of the municipal
 229 corporation. If any of the land area of a proposed district is
 230 within the land area of a municipality, the county commission
 231 may not create the district without municipal approval. If all
 232 of the land in the area for the proposed district, even if less
 233 than 2,500 ~~1,000~~ acres, is within the territorial jurisdiction
 234 of two or more municipalities or two or more counties, except
 235 for proposed districts within a connected-city corridor

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236 established pursuant to s. 163.3246(14), the petition shall be
 237 filed with the Florida Land and Water Adjudicatory Commission
 238 and proceed in accordance with subsection (1).

239 (f) Notwithstanding any other provision of this subsection,
 240 within 90 days after a petition for the establishment of a
 241 community development district has been filed pursuant to this
 242 subsection, the governing body of the county or municipal
 243 corporation may transfer the petition to the Florida Land and
 244 Water Adjudicatory Commission, which shall make the
 245 determination to grant or deny the petition as provided in
 246 subsection (1). A county or municipal corporation does not ~~shall~~
 247 have the ~~ne~~ right or power to grant or deny a petition that has
 248 been transferred to the Florida Land and Water Adjudicatory
 249 Commission.

250 Section 2. Paragraph (d) of subsection (2) of section
 251 190.012, Florida Statutes, is amended to read:

252 190.012 Special powers; public improvements and community
 253 facilities.—The district shall have, and the board may exercise,
 254 subject to the regulatory jurisdiction and permitting authority
 255 of all applicable governmental bodies, agencies, and special
 256 districts having authority with respect to any area included
 257 therein, any or all of the following special powers relating to
 258 public improvements and community facilities authorized by this
 259 act:

260 (2) After the local general-purpose government within the
 261 jurisdiction of which a power specified in this subsection is to
 262 be exercised consents to the exercise of such power by the
 263 district, the district shall have the power to plan, establish,
 264 acquire, construct or reconstruct, enlarge or extend, equip,

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265 operate, and maintain additional systems and facilities for:

266 (d) Security, including, but not limited to, guardhouses,
 267 fences and gates, electronic intrusion-detection systems, and
 268 patrol cars, when authorized by proper governmental agencies;
 269 except that the district may not exercise any police power, but
 270 may contract with the appropriate local general-purpose
 271 government agencies for an increased level of such services
 272 within the district boundaries. This paragraph does not prohibit
 273 a district from contracting with a towing operator to remove a
 274 vehicle or vessel from a district-owned facility or property.
 275 When removing a vehicle or vessel from a district-owned facility
 276 or property, the district has the same authorization and is
 277 subject to the same notice and procedural requirements as the
 278 authorization and the notice and procedural requirements
 279 provided in s. 715.07 for an owner or lessee of private
 280 property. The district's selection of a towing operator is not
 281 subject to public bidding if the towing operator is included in
 282 an approved list of towing operators maintained by the local
 283 government that has jurisdiction over the district's facility or
 284 property.

285 Section 3. Paragraph (e) of subsection (1) and subsection
 286 (2) of section 190.046, Florida Statutes, are amended, present
 287 subsections (4) through (9) of that section are redesignated as
 288 subsections (5) through (10), respectively, and a new subsection
 289 (4) is added to that section, to read:

290 190.046 Termination, contraction, or expansion of
 291 district.—

292 (1) A landowner or the board may petition to contract or
 293 expand the boundaries of a community development district in the

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294 following manner:

295 (e)1. During the existence of a district initially
 296 established by administrative rule, the process to amend the
 297 boundaries of the district pursuant to paragraphs (a)-(d) shall
 298 not permit a cumulative net total greater than 50 ~~40~~ percent of
 299 the land in the initial district, and in no event greater than
 300 1,000 ~~250~~ acres on a cumulative net basis.

301 2. During the existence of a district initially established
 302 by county or municipal ordinance, the process to amend the
 303 boundaries of the district pursuant to paragraphs (a)-(d) shall
 304 not permit a cumulative net total greater than 50 percent of the
 305 land in the initial district, and in no event greater than 1,000
 306 ~~500~~ acres on a cumulative net basis.

307 (2) The district shall remain in existence unless:

308 (a) The district is merged with another district as
 309 provided in subsection (3) or subsection (4);

310 (b) All of the specific community development systems,
 311 facilities, and services that it is authorized to perform have
 312 been transferred to a general-purpose unit of local government
 313 in the manner provided in subsections ~~(4)~~, (5), (6), and (7)
 314 ~~(6)~~; or

315 (c) The district is dissolved as provided in ~~subsection~~
 316 ~~(7)~~, subsection (8), ~~or~~ subsection (9), or subsection (10).

317 (4)(a) To achieve economies of scale, reduce costs to
 318 affected district residents and businesses in areas with
 319 multiple existing districts, and encourage the merger of
 320 multiple districts, up to five districts that were established
 321 by the same local general-purpose government and whose board
 322 memberships are composed entirely of qualified electors may

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323 merge into one surviving district through adoption of an
 324 ordinance by the local general-purpose government,
 325 notwithstanding the acreage limitations otherwise set forth for
 326 the establishment of a district in this chapter. The filing of a
 327 petition by the majority of the members of each of the district
 328 board of supervisors seeking to merge constitutes consent of the
 329 landowners within each applicable district.

330 (b) In addition to meeting the requirements of subsection
 331 (3), a merger agreement entered into between the district boards
 332 subject to this subsection must also:

333 1. Require the surviving merged district board to consist
 334 of five elected board members.

335 2. Require each at-large board seat to represent the entire
 336 geographic area of the surviving merged district.

337 3. Ensure that each district to be merged is entitled to
 338 elect at least one board member from its former boundary.

339 4. Ensure a fair allocation of board membership to
 340 represent the districts being merged. To that end:

341 a. If two districts merge, two board members shall be
 342 elected from each of the districts and one board member shall be
 343 elected at-large.

344 b. If three districts merge, one board member shall be
 345 elected from each of the three districts and two board members
 346 shall be elected at-large.

347 c. If four districts merge, one board member shall be
 348 elected from each of the four districts and one board member
 349 shall be elected at-large.

350 d. If five districts merge, one board member shall be
 351 elected from each of the five districts.

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352 5. Require the election of board members for the surviving
353 merged district to be held at the next general election
354 following the merger, at which time all terms of preexisting
355 board members shall end and the merger shall be legally in
356 effect.

357 (c) Before filing the merger petition with the local
358 general-purpose government under this subsection, each district
359 proposing to merge must hold a public hearing within its
360 district to provide information about and take public comment on
361 the proposed merger, merger agreement, and assignment of board
362 seats. Notice of the hearing shall be published at least 14 days
363 before the hearing. If, after the public hearing, a district
364 board decides that it no longer wants to merge and cancels the
365 proposed merger agreement, the remaining districts shall each
366 hold another public hearing on the revised merger agreement. A
367 petition to merge may not be filed for at least 30 days after
368 the last public hearing held by the districts proposing to
369 merge.

370 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

1156

Bill Number (if applicable)

Topic CDDs

Amendment Barcode (if applicable)

Name Cheryl Stuart

Job Title Attorney - Hopping Green & Senus

Address 119 S. Monroe Ste 300

Phone 222-7500

Street

TLH

City

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing Association of Florida Community Developers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2016 JAN 11 AM 10:26
DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 8, 2016

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised that effective January 9, 2016, I have made the following appointment under the provisions of Section 20.60, Florida Statutes:

Mrs. Theresa Proctor
107 East Madison Street
Caldwell Building
Tallahassee, Florida 32399

as Executive Director of the Department of Economic Opportunity, subject to confirmation by the Senate. This appointment is effective January 9, 2016, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/cc

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2016 JAN 14 AM 9:17

STATE OF FLORIDA

County of Leon

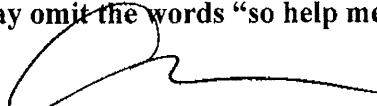
DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Executive Director of DEO
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

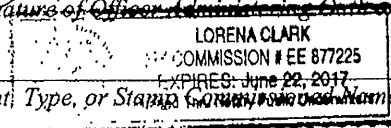


Signature

Sworn to and subscribed before me this 13th day of January, 2016.

Lorena Clark

Signature of Officer Administering Oath of Notary Public



Print, Type, or Stamp Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE


I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

107 E. Madison Street
Street or Post Office Box

Tallahassee, FL 32399
City, State, Zip Code

Cissy Proctor
Print name as you desire commission issued



Signature

CERTIFICATION

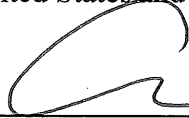
STATE OF FLORIDA

COUNTY OF LEON

Before me, the undersigned Notary Public of Florida, personally appeared

Theresa "Cissy" Proctor

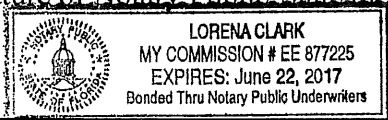
who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me this 12th day of January, 2016.

Lorena Clark
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known **OR** Produced Identification

Type of Identification Produced _____

(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Theresa "Cissy" Proctor
Executive Director, Department of Economic Opportunity

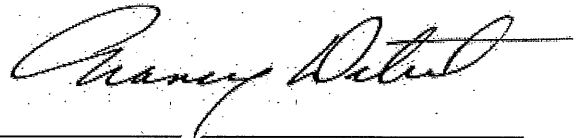
NOTICE OF HEARING

TO: Mrs. Theresa "Cissy" Proctor

YOU ARE HEREBY NOTIFIED that the Committee on Commerce and Tourism of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 16, 2016, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 11th day of February, 2016

Committee on Commerce and Tourism



Senator Nancy C. Detert
As Chair and by authority of the committee

cc: Members, Committee on Commerce and Tourism
Office of the Sergeant at Arms

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Commerce and Tourism Committee

Judge:

Started: 2/16/2016 10:03:14 AM

Ends: 2/16/2016 10:58:02 AM

Length: 00:54:49

10:03:13 AM Order
10:03:20 AM Quorum
10:03:38 AM SB 1216 Senator Stargel
10:04:01 AM Amendment
10:04:49 AM 886940
10:04:55 AM Senator Bean
10:04:58 AM Senator Stargel
10:05:35 AM Questions
10:05:38 AM Senator Bean
10:05:44 AM Close
10:05:50 AM Debate
10:05:52 AM Amendment Adopted
10:05:56 AM Back on the Bill as Amended
10:05:59 AM Questions
10:06:00 AM Appearance
10:06:09 AM Bill Wilson - DEO
10:06:11 AM Caroline Johnson - FL Chamber of Commerce
10:06:19 AM Debate
10:06:23 AM Close
10:06:35 AM Roll
10:06:37 AM CS/SB 1216
10:06:50 AM CS/SB 1216 Reported Favorably
10:07:00 AM CS/SB 1036 Senator Brandes
10:08:17 AM Questions
10:08:41 AM Senator Latvala
10:11:41 AM Staff
10:12:06 AM Amendments
10:12:18 AM Late-filed Amendment 807944
10:12:27 AM Senator Latvala
10:13:05 AM Questions
10:13:08 AM Senator Hutson
10:14:36 AM Appearance
10:14:41 AM Jennifer West - Consumer Federation of the SouthEast
10:16:40 AM Senator Bean
10:17:06 AM Senator Hutson
10:18:33 AM Senator Bean
10:20:17 AM Senator Hutson
10:21:30 AM Senator Richter
10:24:06 AM Jan Gorrie - CARCO
10:27:46 AM Senator Detert
10:28:21 AM Senator Hutson
10:29:06 AM Senator Latvala
10:29:29 AM Senator Richter
10:30:19 AM Senator Latvala
10:31:37 AM Senator Brandes
10:32:23 AM Senator Hutson
10:33:09 AM Senator Richter
10:33:32 AM Senator Latvala Close
10:33:56 AM Senator Brandes
10:34:43 AM Roll on Amendment 807944
10:35:07 AM Amendment Adopted
10:35:09 AM Back on the Bill as Amended

10:35:13 AM Appearance
10:35:18 AM Darren Patz - MEDNAX
10:35:26 AM Ashley Kalifeh - AIF
10:35:52 AM Senator Brandes Close
10:35:56 AM Roll CS/SB 1036 as a Committee Substitute
10:36:11 AM CS/SB 1036 Adopted
10:36:46 AM Appointment of Executive Director of Dept. of Eco. Opportunity
10:37:02 AM Theresa Cissy Proctor
10:38:28 AM Questions
10:39:39 AM Appearance
10:39:42 AM Ms. Proctor Close
10:40:09 AM Senator Bean Moves to Recommend Confirmation
10:40:17 AM Roll on Confirmation
10:40:29 AM Confirmed
10:40:36 AM Ms. Proctor Recommended Favorably
10:40:51 AM SB 556 Senator Altman
10:40:56 AM Legislative Aide Lindy Smith
10:41:27 AM Questions
10:41:31 AM Senator Detert
10:42:18 AM Senator Thompson
10:43:50 AM Senator Detert
10:44:31 AM Appearance
10:44:34 AM Debate
10:44:40 AM Roll SB 556
10:44:46 AM SB 556 Reported Favorably
10:45:01 AM CS/SB 938
10:45:07 AM Senator Benacquisto
10:45:15 AM Legislative Aide Mia Simon
10:46:23 AM Questions
10:46:25 AM Senator Detert
10:46:51 AM Senator Hutson
10:47:38 AM Senator Thompson
10:48:25 AM Senator Detert
10:49:46 AM Appearance
10:49:48 AM Chris Mansen - Consumer Healthcare Products Assoc.
10:50:32 AM Chris Hansen*
10:51:09 AM Amendments
10:51:12 AM Amendment 721242 Senator Bean
10:51:26 AM Mia Simon
10:51:30 AM Questions
10:51:32 AM Debate
10:51:33 AM Amendment Adopted
10:51:36 AM Amendment 526230 Senator Bean
10:51:44 AM Mia Simon
10:51:56 AM Questions
10:51:57 AM Appearance
10:51:59 AM Debate
10:52:01 AM Amendment Adopted
10:52:06 AM Back on the Bill as Amended
10:52:09 AM Questions
10:52:13 AM Debate
10:52:15 AM Close
10:52:18 AM Roll on CS/SB 938 as a Committee Substitute
10:52:38 AM CS/SB 938 Reported Favorably
10:52:47 AM SM 600
10:52:50 AM Senator Thompson
10:53:26 AM Questions
10:53:29 AM Appearance
10:53:33 AM Beverly Glenn - Self
10:53:41 AM Christine Saint Louise - Self
10:53:48 AM Debate
10:53:49 AM Close

10:53:51 AM Roll on SM 600
10:53:57 AM SM 600 Reported Favorably
10:54:17 AM Cs/SB 1156 Senator Hutson
10:54:28 AM Senator Hutson
10:54:56 AM Questions
10:55:02 AM Appearance
10:55:07 AM Cheryl Stuart - Assoc. of FL Community Developers
10:55:16 AM Debate
10:55:17 AM Close
10:55:29 AM Roll CS/SB 1156
10:55:40 AM CS/SB 1156 Reported Favorably
10:55:49 AM SB 612
10:55:57 AM Senator Hays
10:57:19 AM Questions
10:57:21 AM Appearance
10:57:23 AM Debate
10:57:25 AM Close
10:57:30 AM Roll SB 612
10:57:34 AM SB 612 Reported Favorably
10:57:50 AM Meeting Adjourned