

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Montford, Chair
Senator Gainer, Vice Chair

MEETING DATE: Tuesday, February 20, 2018
TIME: 11:00 a.m.—1:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Montford, Chair; Senator Gainer, Vice Chair; Senators Gibson, Hutson, Passidomo, Rodriguez, Stargel, and Young

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|-------------------------|
| 1 | CS/SB 904 Judiciary / Powell (Compare H 599, CS/H 993) | Judicial Process; Revising authority of special process servers; revising requirements for service on limited liability companies; providing that a person who acquires for a value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; revising authority of certified process servers, etc. JU 01/30/2018 Fav/CS CM 02/20/2018 Fav/CS RC | Fav/CS Yeas 6 Nays 0 |
| 2 | SB 1606 Taddeo (Similar H 341, Compare H 343, Linked S 1604) | Film and Television Production; Establishing the Florida Motion Picture Capital Corporation to encourage the use of this state as a site for scripted productions by providing financing to certain productions; requiring the production to use a bonded third-party collection account management firm; requiring the lead producer or production company to have a specified sales record or provide a completion bond; requiring the board to create the Florida Motion Picture Capital Account and maintain exclusive control of the account, etc. CM 02/06/2018 Temporarily Postponed CM 02/20/2018 Fav/CS ATD AP | Fav/CS Yeas 4 Nays 2 |
| 3 | SB 1604 Taddeo (Identical H 343, Compare H 341, Linked S 1606) | Public Records/Florida Motion Picture Capital Corporation; Providing an exemption from public records requirements for certain application information submitted to the Florida Motion Picture Capital Corporation; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 02/06/2018 Temporarily Postponed CM 02/20/2018 Fav/CS GO RC | Fav/CS Yeas 6 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 20, 2018, 11:00 a.m.—1:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|-------------------------|
| 4 | SB 662 Stargel (Similar CS/CS/H 681) | Protection for Vulnerable Investors; Authorizing securities dealers, investment advisers, and associated persons to place temporary holds on transactions regarding certain accounts if the dealer, investment adviser, or associated person believes in good faith that exploitation of specified adults has occurred, is occurring, or has been attempted in connection with the transactions and if the dealer, investment adviser, or associated person complies with specified requirements; providing that such holds expire after a specified timeframe, etc. | Fav/CS Yeas 6 Nays 0 |
| | | BI 02/06/2018 Favorable CM 02/20/2018 Fav/CS RC | |

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: CS/CS/SB 904

INTRODUCER: Commerce and Tourism Committee; Judiciary Committee; and Senator Powell

SUBJECT: Judicial Process

DATE: February 20, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Cibula | Cibula | JU | Fav/CS |
| 2. | Little | McKay | CM | Fav/CS |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 904 makes changes relating to judicial processes governed by chapter 48, F.S. One section of the bill clarifies how long a notice of lis pendens constitutes a bar to the enforcement of all liens or other interests on a property that is sold in a judicial sale. Several other sections revise statutes governing service of process.

The bill clarifies that a notice of lis pendens precludes the enforcement of liens or other interests against a property sold at a judicial sale until the instrument transferring title to the property is recorded. This clarification is a response to a recent appellate court opinion, which, due to its wording, could be interpreted to allow liens to be enforced against a foreclosed property during the timeframe between the date that the property is sold at a judicial sale and the date that the instrument transferring title is recorded.

The changes in the bill relating to service of process allow:

- A certified process server to serve, with respect to civil process, any nonenforceable civil process.
- A process server to serve the spouse of the person to be served in any county of the state, not just the county of their shared residence.
- A process server to serve a limited liability company at additional types of addresses used as the business address, including the address of a virtual office, executive office, or mini suite.

- Any process server to electronically sign return-of-service forms that document the date and time of service, which is a convenience currently reserved for process servers employed by a sheriff.
- The attachment of dark window tinting material to the side and back windows of a vehicle owned or leased by a process server.

II. Present Situation:

A notice of lis pendens,¹ upon recording in the official records of the county, provides notice that a property is the subject of litigation. The notice essentially warns parties who are not involved in the litigation, such as subsequent purchasers or encumbrancers, that any interest they acquire in the property while the litigation is pending may be adversely affected by the outcome of the case.² In other words, the notice of lis pendens helps potential purchasers or encumbrancers of a property avoid becoming embroiled in the dispute, and protects the plaintiff from intervening liens and interests that may impair any property rights claimed.³

The Lis Pendens Statute

The current statutory scheme regulating the procedural requirements and effect of notices of lis pendens has its origins in common law. As modified by statute, “[a]n action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property involved therein or to be affected thereby only if a notice of lis pendens is recorded in the official records of the county where the property is located.”⁴

The following information must be contained in a notice of lis pendens:

- The names of the parties to the lawsuit.
- The date that the lawsuit was filed, the date of the clerk’s electronic receipt, or the case number of the lawsuit.
- The name of the court in which the suit is pending.
- A description of the property involved or to be affected.
- A statement of the relief sought as to the property.⁵

Once a lis pendens is filed, a holder of an unrecorded interest or lien who fails to timely intervene in the proceedings may lose the right to those interests as described below:

[T]he recording of such notice of lis pendens . . . constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and *if such proceedings are*

¹ “Lis pendens” is Latin for a pending lawsuit. BLACK’S LAW DICTIONARY (10th ed. 2014).

² *Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla. 1993).

³ *Id.* at n. 1. (Thus, lis pendens exists at least in part to prevent third-party purchasers from “buying” a lawsuit when they purchase the property.)

⁴ Section 48.23(1)(a), F.S.

⁵ Section 48.23(1)(c), F.S.

*prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens.*⁶

The Ober Opinions

Ober I, the Withdrawn Opinion

On August 24, 2016, the Fourth District Court of Appeal issued an opinion in *Ober v. Town of Lauderdale-by-the-Sea*, which was later withdrawn and replaced with a substitute opinion.⁷ The issue in the opinions required the court to interpret the meaning of the foregoing portions of the lis pendens statute. Specifically, the court sought to determine whether the statute bars the enforcement of liens recorded after a final judgment of foreclosure but before a judicial sale of the property.

Under the facts of the case, a bank recorded a notice of lis pendens on a property as part of a foreclosure proceeding that it initiated on November 26, 2007. On September 22, 2008, the bank obtained a foreclosure judgment on the property. Then, between July 13, 2009, and October 27, 2011, the Town of Lauderdale-by-the-Sea recorded seven code enforcement liens. Finally, the property was sold at a judicial sale to James Ober on September 27, 2012, more than 4 years after the foreclosure judgment. After purchasing the property, Mr. Ober filed suit to quiet title and the town counterclaimed to foreclose on its liens.

In its first *Ober* decision, the district court recognized that the lis pendens statute “does not provide an end date for the lis pendens.” Then the court sought to identify an end date to “avoid the absurd result of a lis pendens precluding any lien from ever being placed on the property in perpetuity.”

Upon reviewing a portion of the lis pendens statute which states, “[a]n action in any of the state or federal courts in this state operates as a lis pendens . . . only if a notice of lis pendens is recorded,”⁸ the court declared that the

plain meaning of [the] provision indicates that the action itself is the actual lis pendens, which takes effect if and when a notice is filed. The lis pendens therefore logically must terminate along with the action. The “action” in this case was the foreclosure action initiated by the non-party bank, which terminated thirty days after the court’s issuance of a final judgment.

The court ultimately held that “a lis pendens bars liens only through final judgment, and does not affect the validity of liens after that date, even if they are before the actual sale of the property.” The court went on to state that the *Ober* “case appears to reveal a misstatement of the law” in the Final Judgment of Foreclosure form incorporated into the Florida Rules of Civil Procedure. The

⁶ Section 48.23(1)(d), F.S. (emphasis added).

⁷ *Ober v. Town of Lauderdale-by-the-Sea* No. 4D14-4597 (Fla. 4th DCA 2016). The withdrawn opinion is no longer available on Westlaw, but it is available without reference, pages, or volume numbers at findlaw.com at <http://caselaw.findlaw.com/fl-district-court-of-appeal/1746796.html> (last visited Feb. 19, 2018).

⁸ Section 48.23(1)(a), F.S.

form, according to the court, incorrectly suggests that “all liens from the filing of the lis pendens until the certificate of sale⁹ is filed are discharged.”

Ober II, the Substitute Opinion

The Fourth District Court of Appeal’s initial opinion in *Ober* “shocked the mortgage lending community by holding that the protections traditionally afforded by the recordation of a lis pendens terminated 30 days after the entry of final judgment of foreclosure even when the sale had not yet occurred.”¹⁰ The opinion, going against the traditional understanding of the statute, was expected to disrupt the sale of title insurance, the real estate market, and reduce bids on properties at foreclosure sales, which would result in more foreclosed property owners facing liability for deficiency judgments.¹¹

However, the court granted Ober’s motion for rehearing and issued a substitute opinion, essentially reversing its initial opinion.¹² In the substitute opinion, the court stated:

We reject the Town’s argument that the statute applies only to liens existing or accruing prior to the date of the final judgment. The language of the statute is broad, applying to “all interests and liens.” Significantly, the statute expressly contemplates that its preclusive operation continues through a “judicial sale.” This is consistent with how foreclosure suits operate in the real world.¹³

The court’s opinion also indicates that several groups that are active participants in real estate transactions filed amicus briefs in opposition to the court’s initial decision. The Florida Bankers Association advised the court that foreclosure suits are “unlike many civil lawsuits in that ‘much remains to be accomplished after entry of final judgment, including the foreclosure sale, the issuance of certificates of sale and title, and, in many instances, the prosecution of a deficiency claim, all under court supervision.’”¹⁴ The court also noted that the Business Law Section of The Florida Bar explained that the statement of law, which the court previously criticized, in the Final Judgment of Foreclosure form “reflects the common understanding of the operation of the lis pendens statute.”¹⁵

In concluding its substitute opinion, the court recognized that precluding the attachment of local code enforcement liens between a final judgment of foreclosure and the judicial sale of a foreclosed property presents the practical problem of collecting fines for code violations. This problem, according to the court, is in the province of the Legislature.¹⁶

⁹ A certificate of sale is a document that the clerk of court will file and serve on the affected parties after the judicial sale of the property. The certificate will identify when notices of the sale were published in a newspaper and identify the purchaser and the amount paid for the property. Afterwards, the clerk will record a certificate of title transferring title of the property to the purchaser. Section 45.031(4) and (6), F.S.

¹⁰ Lauren Reynolds, *The Resurrection of Lis Pendens: Ober Reversed on Rehearing*, 20 No. 17 CONSUMER FIN. SERVICES L. REP. 26 (Feb. 28, 2017).

¹¹ *Id.*

¹² *Ober v. Town of Lauderdale-by-the-Sea*, 218 So. 3d 952 (Fla. 4th DCA 2017), cert. denied, 2017 WL 3883662 (Fla. 2017).

¹³ *Id.* at 954.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 954-55.

Real Property Probate & Trust Law Section of The Florida Bar

Although, the Fourth District Court of Appeal reversed itself, the Real Property, Probate, and Trust Law Section of The Florida Bar is pursuing legislative changes to the lis pendens statute.¹⁷ The wording of the court’s substitute opinion in *Ober* described the preclusive effect of a notice of lis pendens as continuing “through a ‘judicial sale.’”¹⁸ As such, the court may have inadvertently created a gap of time between a judicial sale and the recording of a certificate of title, during which liens may attach to a foreclosed property. In some cases, this timeframe may last “days, weeks, or months.”¹⁹

Accordingly, the changes pursued by the Section are intended to “preserve the widely understood interpretation of the statute, that . . . a lis pendens remains in effect through the recording of an instrument transferring title pursuant to a judicial sale.”²⁰ This change will “provide the purchaser [of foreclosed property] with title free and clear of intervening subordinate interests or liens.”²¹

Service of Process

Service of process involves the delivery of papers such as pleadings, complaints, and subpoenas in connection with judicial proceedings. These documents must be delivered by a process server who is disinterested in the outcome of the case. There are four types of individuals who are authorized to serve process: sheriffs’ officers, special process servers, certified process servers, and those authorized to serve civil witness subpoenas under the rules of civil procedure.²² Certified process servers may serve “initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses.”²³

Typically, personal service is accomplished by personal delivery of the process to its intended recipient.²⁴ In some cases, however, the statutes allow for service on others in place of the intended recipient. For example, process may be made on the intended recipient’s spouse “if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling.”²⁵

¹⁷ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposal to Amend Section 48.23, Fla. Stat. (Lis Pendens)* (Oct. 10, 2017) (On file with the Senate Committee on Judiciary).

¹⁸ *Ober v. Town of Lauderdale-by-the-Sea*, 218 So. 3d 952, 954 (Fla. 4th DCA 2017), *cert. denied*, 2017 WL 3883662 (Fla. 2017).

¹⁹ Real Property, Probate and Trust Law Section, *supra* n. 1.

²⁰ *Id.*

²¹ *Id.*

²² See ss. 48.021(1), 48.27, F.S., and Fla.R.Civ.P. 1.070.

²³ Section 48.021(1), F.S.

²⁴ Section 48.031(1)(a), F.S.

²⁵ Section 48.031(2)(a), F.S.

Substitute service is also allowed if the only address discoverable through public records for the person to be served is a private mailbox, a virtual office, or an executive office or minisuite.²⁶ In these instances, substitute service may be made by leaving a copy of the process with the person in charge of the facility.

Similarly, service may be made on a limited liability company by serving the process on its registered agent.²⁷ The agent's business address for service of process must be the same as the agent's registered office, but this address may be a residence or a private mailbox.²⁸

When a process server serves process, the process server must place "on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process."²⁹ The process server must also sign a return-of-service form identifying all the initial pleadings delivered and served with the process. If the process server is employed by a sheriff, he or she may sign the form with an electronic signature.³⁰ The person who requested service or the person authorized to serve the process must file the form with the court.³¹

When service of process must be made on a person who is outside this state, the statutes state that the process "shall be made . . . by any officer authorized to serve process in the state where the person is served."³² The statutes further provide that the officer's affidavit, which identifies the time, manner, and place of service, should be filed with the court.

Motor Vehicle Sunscreening Material

Sections 316.2951 – 316.2956, F.S., prohibit certain sunscreening material³³ from being attached to the windshield and windows of motor vehicles operated on public highways, roads, and streets. Individuals are permitted to attach sunscreening material to "a strip at the top of a windshield, so long as such material is transparent and does not encroach upon the driver's direct forward viewing area."³⁴ Generally, sunscreening material may not be attached to any side windows or windows behind the driver if the material "has the effect of making the window nontransparent or would alter the window's color, increase its reflectivity, or reduce its light transmittance..."³⁵

²⁶ Section 48.031(6)(a), F.S. A virtual office is "an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space, and where all communications are routed through a common receptionist." Section 48.031(6)(b), F.S. An executive office or mini suite is "an office that provides communications services, such as telephone and facsimile services, a dedicated office space, and other supportive services, and where all communications are routed through a common receptionist." *Id.*

²⁷ Section 48.062, F.S.

²⁸ Sections 605.0113(1)(a) and 48.062(4), F.S.

²⁹ Section 48.031(5), F.S.

³⁰ Section 48.21(1), F.S.

³¹ Section 48.031(5), F.S.

³² Section 48.194(1), F.S.

³³ "Sunscreening material" is a product attached to the windshield or other windows of a motor vehicle to reduce the effect of the sun. Sunscreening materials include film, glazing, and perforated sunscreening. *See s. 316.2951(4), F.S.*

³⁴ Section 316.2952(2)(b), F.S.

³⁵ Section 316.2953, F.S.; Section 316.2954, F.S.

Section 316.29545, F.S., requires the Department of Highway Safety and Motor Vehicles to exempt law enforcement officers and individuals with certain medical conditions from the window sunscreening limitations in ss. 316.2951-316.2957, F.S. This section also exempts private investigators from the window sunscreening limitations under ss. 316.2953, 316.2954, and 316.2956.

III. Effect of Proposed Changes:

Notices of Lis Pendens

A notice of lis pendens is notice recorded in the official records of a county warning that the outcome of litigation involving the property may affect the interests of future purchasers or encumbrancers, such as those who may enforce a lien against the property. This bill clarifies that a notice of lis pendens precludes the enforcement of liens or other interests against a property sold at a judicial sale until the instrument transferring title to the property is recorded. This clarification to the lis pendens statute, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is consistent with “the long established and accepted understanding of the lis pendens statute.”³⁶

The bill is a response to a recent appellate court opinion interpreting the current lis pendens statute. Due to its particular wording, the opinion could be interpreted to allow liens to be enforced against a foreclosed property during the gap between the date that the property is sold at a judicial sale and the date that the instrument transferring title is recorded.

The bill declares that because of its clarifying nature, the changes to the lis pendens statute apply to actions pending on the effective date of the bill.³⁷

Service of Process

This bill allows certified process servers to serve a wider variety of process. Under current law, these process servers, with respect to civil process, may serve only the initial nonenforceable civil process. Under the bill, they may serve any nonenforceable civil process.

The bill also allows for substituted service on a spouse in any county, not just the county of residence of the spouse and person to be served, as provided in current law.

³⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposal to Amend Section 48.23, Fla. Stat. (Lis Pendens)* (Oct. 10, 2017) (On file with the Senate Committee on Judiciary).

³⁷ Courts presume that when the Legislature amends a statute, a change in the meaning of the statute is intended. *Hill v. State*, 143 So. 3d 981, 986 (Fla. 4th DCA 2014) However, courts also “recognize that, at times, a mere change in the language of a statute ‘does not necessarily indicate an intent to change the law’ because the intent may be to clarify what was doubtful and to erase misapprehension as to existing law.” *Id.* (quoting *State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickinson*, 286 So. 2d 529, 531 (Fla.1973)). Similarly, “if the Legislature amends a statute shortly after a controversy arises with respect to the interpretation of the statute, then the amendment may be considered to be a legislative interpretation of the original statute rather than a substantive change to the statute.” *Leftwich v. Florida Dept. of Corr.*, 148 So. 3d 79, 83 (Fla. 2014) (citing *Lowry v. Parole & Prob. Comm’n*, 473 So. 2d 1248, 1250 (Fla. 1985)). Accordingly, these interpretive principles support the assertion in the bill that it clarifies existing law and that the bill may apply to pending actions without violating the constitutional restrictions on retroactive laws.

Under the bill, a limited liability company may be served at additional types of business addresses. Existing law contemplates that a limited liability company will be served at the address for the registered agent, member, or manager if it is a residence or a private mailbox. The bill allows the limited liability company to also be served at a virtual office, executive office, or mini suite.

The bill allows out-of-state service of process to be made by any person authorized to serve process in that state. In contrast, current law requires that out-of-state service of process be made by an officer authorized to serve process in the state.

Under the bill, any process server may sign return of service forms with an electronic signature. Under current law, this convenience is reserved for process servers employed by a sheriff.

Finally, the bill adds certified process servers to the window sunscreening exemption under s. 316.2956(3), F.S., allowing specified individuals to apply dark window tint to the side and back windows of their motor vehicle. Currently, only vehicles used by private investigators, those with a medical exemption, and law enforcement agencies may use dark window tinting.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, Florida Constitution, provides, that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact,³⁸ which for Fiscal Year 2017-2018, is \$2.08 million or less.³⁹

To the extent that the bill limits local government authority to raise revenue by prohibiting the enforcement of code violations, the county/municipality mandates provision of Art. VII, S. 18 of the Florida Constitution may apply. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

³⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 19, 2018).

³⁹ Based on the Demographic Estimating Conference's population adopted on July 10, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 19, 2018).

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:

By precluding the enforcement of liens or other interests to a foreclosed property between the judicial sale and the transfer of title to the new purchaser, the bill may simplify or prevent the complication of real estate transaction.

C. Government Sector Impact:

This bill may limit the ability of local governments to collect fines for code violations by ensuring that local governments cannot enforce a lien against a foreclosed property between the date of the foreclosure sale and the date title to the property is transferred to the purchaser.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.23, 48.021, 48.031, 48.062, 48.194, 48.21, 48.27, 316.29545.

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 on February 20, 2018:

The committee substitute:

- Clarifies that a process server may initial or sign the first page of at least one of the processes served; and
- Makes a technical change to include vehicles of process servers in the catch line of s. 316.29545, F.S.

CS by Judiciary on January 30, 2018:

The original bill amended a statute relating to lis pendens. The committee substitute also makes changes to statues governing process servers and service of process.

- B. **Amendments:**

None.



257202

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 67
and insert:
of service, his or her initials or signature, and, if
applicable, his or her



164672

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
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| | . | |

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

Senate Amendment

Delete lines 185 - 194

and insert:

Section 9. Section 316.29545, Florida Statutes, is amended to read:

316.29545 Window suncreening exclusions; medical exemption; certain law enforcement vehicles, process server vehicles, and private investigative service vehicles exempt.—

(1) The department shall issue medical exemption



164672

11 certificates to persons who are afflicted with Lupus, any
12 autoimmune disease, or other medical conditions which require a
13 limited exposure to light, which certificates shall entitle the
14 person to whom the certificate is issued to have sunscreening
15 material on the windshield, side windows, and windows behind the
16 driver which is in violation of the requirements of ss.
17 316.2951-316.2957. The department shall consult with the Medical
18 Advisory Board established in s. 322.125 for guidance with
19 respect to the autoimmune diseases and other medical conditions
20 which shall be included on the form of the medical certificate
21 authorized by this section. At a minimum, the medical exemption
22 certificate shall include a vehicle description with the make,
23 model, year, vehicle identification number, medical exemption
24 decal number issued for the vehicle, and the name of the person
25 or persons who are the registered owners of the vehicle. A
26 medical exemption certificate shall be nontransferable and shall
27 become null and void upon the sale or transfer of the vehicle
28 identified on the certificate.

29 (2) The department shall exempt all law enforcement
30 vehicles used in undercover or canine operations from the window
31 sunscreening requirements of ss. 316.2951-316.2957.

32 (3) The department shall exempt from the window
33 sunscreening restrictions of ss. 316.2953, 316.2954, and
34 316.2956 vehicles that are owned or leased by process servers
35 certified pursuant to s. 48.29 and private investigators or
36 private investigative agencies licensed under chapter 493.

37 (4) The department may charge a fee in an amount sufficient
38 to defray the expenses of issuing a medical exemption
39 certificate as described in subsection (1).



164672

40 (5) The department is authorized to promulgate rules for
41 the implementation of this section.

By the Committee on Judiciary; and Senator Powell

590-02640-18

2018904c1

1 A bill to be entitled
 2 An act relating to judicial process; amending s.
 3 48.021, F.S.; revising authority of special process
 4 servers; revising a cross-reference; requiring that
 5 civil witness subpoenas be served by certain persons;
 6 amending s. 48.031, F.S.; revising requirements for
 7 substituted service on the spouse of the person to be
 8 served; revising requirements for documenting service
 9 of process; conforming terminology; amending s.
 10 48.062, F.S.; revising requirements for service on
 11 limited liability companies; amending s. 48.194, F.S.;
 12 revising provisions specifying who may serve process
 13 outside of the state; revising requirements for
 14 documenting that service has been properly made
 15 outside the state; amending s. 48.21, F.S.; revising
 16 requirements for return-of-service forms; authorizing
 17 certain persons to electronically sign return-of-
 18 service forms; amending s. 48.23, F.S.; providing that
 19 a person who acquires for a value a lien on property
 20 during the course of specified legal actions takes
 21 such lien free of claims in certain circumstances;
 22 specifying the effect of a valid, recorded notice of
 23 lis pendens in certain circumstances involving a
 24 judicial sale; providing applicability; amending s.
 25 48.27, F.S.; revising authority of certified process
 26 servers; conforming terminology; amending s.
 27 316.29545, F.S.; exempting certified process servers
 28 from certain window suncreening restrictions;
 29 providing an effective date.

Page 1 of 7

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

590-02640-18

2018904c1

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (1) of section 48.021, Florida
 34 Statutes, is amended to read:
 35 48.021 Process; by whom served.—
 36 (1) All process shall be served by the sheriff of the
 37 county where the person to be served is found, except ~~initial~~
 38 nonenforceable civil process, criminal witness subpoenas, and
 39 criminal summonses may be served by a special process server
 40 appointed by the sheriff as provided ~~for~~ in this section or by a
 41 certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25-~~
 42 ~~48.31~~. Civil witness subpoenas shall ~~may~~ be served by any person
 43 authorized by rules of civil procedure.
 44 Section 2. Subsections (2) and (5) and paragraph (a) of
 45 subsection (6) of section 48.031, Florida Statutes, are amended
 46 to read:
 47 48.031 Service of process generally; service of witness
 48 subpoenas.—
 49 (2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the
 50 spouse of the person to be served may be made at any place in a
 51 ~~the~~ county by an individual authorized under s. 48.021 or s.
 52 48.27 to serve process in that county, if the cause of action is
 53 not an adversarial ~~adversary~~ proceeding between the spouse and
 54 the person to be served, if the spouse requests such service or
 55 the spouse is also a party to the action, and if the spouse and
 56 person to be served reside ~~are residing~~ together in the same
 57 dwelling, regardless of whether such dwelling is located in the
 58 county where substituted service is made.

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59 (b) Substituted ~~Substitute~~ service may be made on an
60 individual doing business as a sole proprietorship at his or her
61 place of business, during regular business hours, by serving the
62 person in charge of the business at the time of service if two
63 attempts to serve the owner are ~~have been~~ made at the place of
64 business.

65 (5) A person serving process shall place, on the first page
66 only of at least one of the processes served, the date and time
67 of service, his or her initials, and, if applicable, his or her
68 identification number and initials for all service of process.
69 ~~The person serving process shall list on the return-of-service~~
70 ~~form all initial pleadings delivered and served along with the~~
71 ~~process.~~ The person requesting service or the person authorized
72 to serve the process shall file the return-of-service form with
73 the court.

74 (6) (a) If the only address for a person to be served which
75 is discoverable through public records is a private mailbox, a
76 virtual office, or an executive office or mini suite,
77 substituted ~~substitute~~ service may be made by leaving a copy of
78 the process with the person in charge of the private mailbox,
79 virtual office, or executive office or mini suite, but only if
80 the process server determines that the person to be served
81 maintains a mailbox, a virtual office, or an executive office or
82 mini suite at that location.

83 Section 3. Subsection (4) of section 48.062, Florida
84 Statutes, is amended to read:

85 48.062 Service on a limited liability company.—

86 (4) If the address ~~provided~~ for the registered agent,
87 member, or manager is a residence, a ~~or~~ private mailbox, a

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88 virtual office, or an executive office or mini suite, service on
89 the domestic or foreign limited liability company, ~~domestic or~~
90 ~~foreign~~, may be made by serving the registered agent, member, or
91 manager in accordance with s. 48.031.

92 Section 4. Subsection (1) of section 48.194, Florida
93 Statutes, is amended to read:

94 48.194 Personal service outside state.—

95 (1) Except as otherwise provided herein, service of process
96 on persons outside of this state shall be made in the same
97 manner as service within this state by any person officer
98 authorized to serve process in the state where the person is
99 served. No order of court is required. ~~An affidavit of the~~
100 ~~officer shall be filed, stating the time, manner, and place of~~
101 ~~service.~~ A The court may consider the return-of-service form
102 described in s. 48.21 affidavit, or any other competent
103 evidence, in determining whether service has been properly made.
104 Service of process on persons outside the United States may be
105 required to conform to the provisions of the Hague Convention on
106 the Service Abroad of Judicial and Extrajudicial Documents in
107 Civil or Commercial Matters.

108 Section 5. Subsection (1) of section 48.21, Florida
109 Statutes, is amended to read:

110 48.21 Return of execution of process.—

111 (1) Each person who effects service of process shall note
112 on a return-of-service form attached thereto, the date and time
113 when it comes to hand, the date and time when it is served, the
114 manner of service, the name of the person on whom it was served,
115 and, if the person is served in a representative capacity, the
116 position occupied by the person. The return-of-service form must

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117 list all pleadings served and be signed by the person who
 118 effects the service of process. However, a person who is
 119 authorized under this chapter to serve process and ~~employed by a~~
 120 ~~sheriff~~ who effects such the service of process may sign the
 121 return-of-service form using an electronic signature ~~certified~~
 122 ~~by the sheriff.~~

123 Section 6. Paragraphs (b) and (d) of subsection (1) of
 124 section 48.23, Florida Statutes, is amended to read:

125 48.23 Lis pendens.—

126 (1)

127 (b)1. An action that is filed for specific performance or
 128 that is not based on a duly recorded instrument has no effect,
 129 except as between the parties to the proceeding, on the title
 130 to, or on any lien upon, the real or personal property unless a
 131 notice of lis pendens has been recorded and has not expired or
 132 been withdrawn or discharged.

133 2. Any person acquiring for value an interest in, or lien
 134 upon, the real or personal property during the pendency of an
 135 action described in subparagraph 1., other than a party to the
 136 proceeding or the legal successor by operation of law, or
 137 personal representative, heir, or devisee of a deceased party to
 138 the proceeding, shall take such interest or lien exempt from all
 139 claims against the property that were filed in such action by
 140 the party who failed to record a notice of lis pendens or whose
 141 notice expired or was withdrawn or discharged, and from any
 142 judgment entered in the proceeding, notwithstanding the
 143 provisions of s. 695.01, as if such person had no actual or
 144 constructive notice of the proceeding or of the claims made
 145 therein or the documents forming the causes of action against

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146 the property in the proceeding.

147 (d) Except for the interest of persons in possession or
 148 easements of use, the recording of such notice of lis pendens,
 149 provided that during the pendency of the proceeding it has not
 150 expired pursuant to subsection (2) or been withdrawn or
 151 discharged, constitutes a bar to the enforcement against the
 152 property described in the notice of all interests and liens,
 153 including, but not limited to, federal tax liens and levies,
 154 unrecorded at the time of recording the notice unless the holder
 155 of any such unrecorded interest or lien intervenes in such
 156 proceedings within 30 days after the recording of the notice. If
 157 the holder of any such unrecorded interest or lien does not
 158 intervene in the proceedings and if such proceedings are
 159 prosecuted to a judicial sale of the property described in the
 160 notice, the property shall be forever discharged from all such
 161 unrecorded interests and liens. A valid recorded notice of lis
 162 pendens of such proceedings prosecuted to a judicial sale
 163 remains in effect through the recording of any instrument
 164 transferring title to the property pursuant to the final
 165 judgment unless it expires, is withdrawn, or it is otherwise
 166 discharged. If the notice of lis pendens expires or is withdrawn
 167 or discharged, the expiration, withdrawal, or discharge of the
 168 notice does not affect the validity of any unrecorded interest
 169 or lien.

170 Section 7. The changes made by this act to s. 48.23,
 171 Florida Statutes, are intended to clarify existing law and shall
 172 apply to actions pending on the effective date of this act.

173 Section 8. Paragraph (a) of subsection (2) of section
 174 48.27, Florida Statutes, is amended to read:

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175 48.27 Certified process servers.-

176 (2) (a) The addition of a person's name to the list
177 authorizes him or her to serve ~~initial~~ nonenforceable civil
178 process on a person found within the circuit where the process
179 server is certified when a civil action ~~is has been~~ filed
180 against such person in the circuit court or in a county court in
181 the state. Upon filing an action in circuit or county court, a
182 person may select from the list for the circuit where the
183 process is to be served one or more certified process servers to
184 serve ~~initial~~ nonenforceable civil process.

185 Section 9. Subsection (3) of section 316.29545, Florida
186 Statutes, is amended to read:

187 316.29545 Window suncreening exclusions; medical
188 exemption; certain law enforcement vehicles and private
189 investigative service vehicles exempt.-

190 (3) The department shall exempt from the window
191 sunscreening restrictions of ss. 316.2953, 316.2954, and
192 316.2956 vehicles that are owned or leased by process servers
193 certified pursuant to s. 48.29 and private investigators or
194 private investigative agencies licensed under chapter 493.

195 Section 10. This act shall take effect upon becoming a law.

APPEARANCE RECORD

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

2/20/18

Meeting Date

904

Bill Number (if applicable)

Topic Judicial Process

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title _____

Address 215 S. Monroe St., Ste. 815

Street

Phone (850) 999-4100

Tallahassee FL 32301

City

State

Zip

Email bfinkbeiner@deanmead.com

Speaking: For Against Information

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

Representing Real Property, Probate, + Trust Law Section of the FL Bar

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)

2/20

Meeting Date

904

Bill Number (if applicable)

257202

Amendment Barcode (if applicable)

Topic PROCESS SERVICE

Name MARTY BOWEN

Job Title

Address 108 E. JEFFERSON

Street

Phone 850-228-3904

TALLAHASSEE FL 32308

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing FL ASSOC OF PROF. PROCESS SERVERS

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

THE FLORIDA SENATE APPEARANCE RECORD

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

2-20-18

Meeting Date

SB 904

Bill Number (if applicable)

257205

Amendment Barcode (if applicable)

Topic _____

Name MICHAEL C NOLAN

Job Title LEGISLATIVE COMMITTEE

Address 7498 ANGLEWOOD LANE
Street

Phone 850-562-6058

TALLAHASSEE FL 32309
City State Zip

Email _____

Speaking: For Against Information

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

Representing FAPPS

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)

2/20/18
Meeting Date

SB 904
Bill Number (if applicable)

257202
Amendment Barcode (if applicable)

Topic LES PENNONS

Name Michael Compton

Job Title Chair Leg LEAPPS

Address 224 Harvey Mill Rd
Street

Phone 850-433-4333

Lawfordville, FL 32327
City State Zip

Email MIKE@PROFESSORAMERICAN

Speaking: For Against Information

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

Representing Florida Associations of Professional Process Servers

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

Committee Agenda Request

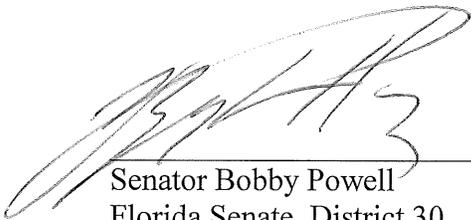
To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 5, 2018

I respectfully request that **Senate Bill #904**, relating to Lis Pendens, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30

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 1606

INTRODUCER: Commerce and Tourism Committee and Senators Taddeo and Gibson

SUBJECT: Film and Television Production

DATE: February 20, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1606 creates section 288.1259, F.S. establishing the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Capital Account (account). The purpose of the corporation is to attract feature film and television productions to the state by using the account to assist with financing. The bill dictates the composition of the corporations' board, its financing application and approval process, formation and guidelines for the account, and production eligibility qualifications. The bill requires yearly reporting to the Department of Economic Opportunity, and provides for yearly audits by the Auditor General. Additionally, the corporation and account are subject to public record and public meeting provisions in chapters 119 and 286, F.S. The state cannot be held liable for any claims against the corporation or account.

The corporation is set up to receive both public and private funds, but there is no appropriation of state funds in this bill.

This bill has an effective date of July 1, 2018.

II. Present Situation:

Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida's entertainment industry,

including serving as a liaison between the industry and government entities and facilitating access to filming locations. The Commissioner of Film and Entertainment must meet certain qualifications and is selected through a national search. The OFE is assisted by the Florida Film and Entertainment Advisory Council (council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.

The OFE gathers statistical information related to the state's entertainment industry; provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities; administers field offices outside the state; and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO's Strategic Plan for Economic Development. The OFE's mission is to build, support, and market the entertainment industry in Florida.

Entertainment Industry Incentive Programs

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program,¹ a 6-year program that began July 1, 2010, and sunset June 30, 2016. The program provided tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits could be applied against the corporate income tax or sales and use taxes. Additionally these tax credits could be transferred or sold one time.²

Over the 6-year period, a total of \$296 million in tax credits were authorized. Annual limitations for tax credits were set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.³

The OFE reports that all of the tax credits authorized for the 6-year period have been certified (allocated to certified productions).⁴

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.⁵ Qualified production companies are exempt from paying sales tax for the following:

¹ Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

² Also, tax credits may be relinquished to the Department of Revenue for 90 percent of the amount of the relinquished tax credit.

³ Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Return on Investment for the Entertainment Industry Incentive Programs* (January, 2015).

⁵ Section 288.1258, F.S. See also Department of Revenue, Film in Florida Sales Tax Exemption, available at http://dor.myflorida.com/dor/taxes/film_in_florida.html (last visited February 19, 2018).

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term “activity or service” includes photography, casting, location scouting, and designing sets).⁶
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.⁷
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.⁸
- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*⁹

The OFE reviews and approves applications for the exemptions and the Department of Revenue (DOR) issues certificates of exemption to the production companies.

III. Effect of Proposed Changes:

Florida Motion Picture Capital Corporation

Section 1 creates the Florida Motion Picture Capital Corporation (corporation) and the Florida Motion Picture Account (account). The corporation is set up to receive public and private funds, to be used to finance feature film and television productions in the state.

Board of Directors

The bill:

- Requires the formation of a board of directors, granting it powers and duties;
- Requires the board to be made up of seven members populated as follows;
 - Two members with experience in fund management of feature film and television production;
 - Three members that are recognized leaders in the production of feature film and television in the state;
 - One member representing the businesses that supply productions; and
 - One member representing the state’s feature film and television workforce;
- Requires minority and gender representation to be considered in the board member appointment process;
- Requires that the initial board be nominated by the following entities:
 - The presidents of the Florida Venture Forum¹⁰ and the Florida Chamber of Commerce each shall nominate one member;
 - The Governor, President of the Senate, and Speaker of the House each shall nominate a member;
 - The DEO shall nominate a member; and

⁶ Section 212.031(1)(a)9., F.S.

⁷ Section 212.06(1)(b), F.S., provides a definition of the term “qualified motion picture” for purposes of ch. 212, F.S.

⁸ Section 212.08(5)(f), F.S.

⁹ Section 212.08(12), F.S.

¹⁰ The Florida Venture Forum is a membership organization that assists entrepreneurs with education, strategic planning, and networking in order to improve their fund raising. <http://www.flventure.org/> (last visited February 19, 2018).

- The chair of the Congress of Motion Picture Associations¹¹ of Florida shall nominate a member;
- Requires the three year terms of members to be staggered;
- Allows board members to be reappointed;
- Requires board vacancies to be filled within 30 days of the vacancy; and
- Holds board members responsible to the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, F.S.
- Requires the corporation and the account to subject to the Public Records Act of chapter 119, F.S., and to public meeting requirements in chapter 286, F.S.

Definitions and Exclusions

The bill:

- Defines high-wage jobs, in-state expenditures, television, and productions; and
- Excludes commercials, infomercials, political advertisements, reality shows, music videos, game shows, award shows, sporting events, educational programming, pornographic productions, and gambling-related productions from benefiting from the financing available through the corporation;

Board Bylaws

The bill authorizes the corporation to provide financing according to adopted bylaws that must:

- Favor applications that will generate the greatest economic impact to the state;
- Disallow financing to exceed the in-state expenditures of a production;
- Require that the corporation's investment in a production share the highest priority with other preferred shareholders;
- Require that financing must be less than one-half of the cost of the production's total shares;
- Limit financing for each accepted production to 12.5 percent of the total funds available in the account or less;
- Limit the corporation from having any creative and managerial rights over the productions it funds;
- Require the corporation to establish variable limits on returns, accounting for time value, and reduce returns in exchange for an early buyout;
- Require the corporation to establish an application process and have two application periods per fiscal year; and
- Limit funds for one production to 40 percent or less of the total funds available in the account, per application period.

Florida Motion Picture Capital Account

The Florida Motion Picture Capital Account shall be under the exclusive control of the board. The account is approved to accept state, federal, and local public funding as well as private funding. The account funds may be invested when not allocated and the dividends redeposited into the account. The corporation shall keep their operating expense as low as possible.

¹¹ Congress of Motion Picture Associations represents individuals that work in the feature film and television industry. <http://compassflorida.org/> (last visited February 19, 2018).

Appropriations explicitly made for operating costs and net financial investment returns made be used to fund the corporation's operating costs.

The state cannot be held liable for any claims against the account or corporation.

The President of the Florida Motion Picture Capital Corporation

The President shall be appointed by the board and have financing of feature film and television experience. The president serves at the pleasure of the board, administering corporation programs and submitted annual budgets. The president may hire a staff. The president's salary and benefits will be determined by the board as authorized by the Governor.

Funding Application Requirements

The bill requires productions applying for funding to have:

- A bonded third-party collection account management firm;
- A sales estimate from an established, qualified sales agency;
- An insurance package rated "A" or higher by A.M. Best Company;
- Proof of funds and their remaining budget in escrow;
- A lead producer with experience on five feature films, or a completion bond;
- A budget, script, and filming schedule approved by a production expert as selected by the board;
- Right of the board to inspect and audit weekly cost reports and general ledger; and
- Contingency funds of at least five percent of the productions total budget.

Funding Preferences and Release

The bill requires funding preference to be given to:

- Productions that will generate the greatest comparative economic impact for the state;
- Productions whose proposed financing has corporation funds as the smallest percentage of their overall financing;
- Productions that will have in-state expenditures begin the soonest;
- Productions by companies with a verifiable track record of success;
- Productions by companies based in this state or that are produced, written, or directed by a Florida resident;
- Productions that are expected to significantly increase tourism;
- Productions with recognized creative talent; and
- Productions that have local funding matches.

After funding of a production has been approved the corporation must release the funds in the following manner:

- Fifty percent of funds on the first day of principle photography;
- Twenty-five percent of funds upon completion of principal photography; and
- Twenty-five percent of funds after final picture lock, as the term is understood in the industry.

Public Notice of Financing

When the corporation executes a contract it must notify the department, and maintain a copy of that notice on their website as long as the financing is outstanding. The notice must include a description of the production, name of the production company, names of the creative talent, and the transportation coordinator.

Reporting and Audits

The corporation must provide annual reports to the DEO, including information related to projects financed by the corporation, and the Auditor General must audit both the corporation and account annually.

DEO Annual Report

Section 2 provides that the DEO's annual report required by s. 20.60(10)(b), F.S., must include information related to projects financed by the corporation.

Effective Date

Section 3 provides that the bill takes effect July 1, 2018.

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, depending on the availability of funds.

C. Government Sector Impact:

Indeterminate. The bill does not provide an appropriation of state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Though the bill provides for annual reporting by the corporation to the DEO, it does not appear that the DEO has authority in the bill to enforce the bill's provisions.

VIII. Statutes Affected:

This bill creates section 288.1259 of the Florida Statutes.
This bill substantially amends section 20.60 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism Committee on February 20, 2018:

The committee substitute requires yearly reporting of specified information to the DEO, requires the Auditor General to audit the corporation and account on an annual basis, clarifies the board member appointment process, caps the salary of the president of the corporation, and requires the corporation and its board be subject to the Public Records Act in chapters 119, and 286, F.S.

- B. **Amendments:**

None.



533118

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 288.1259, Florida Statutes, is created
to read:

288.1259 Florida Motion Picture Capital Corporation.-

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

(a) "Account" means the Florida Motion Picture Capital
Account.



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11 (b) "Board" means the corporation's board of directors.

12 (c) "Corporation" means the Florida Motion Picture Capital
13 Corporation.

14 (d) "High-wage jobs" are jobs that pay at least 120 percent
15 of the median wage for the arts, design, entertainment, sports,
16 and media occupations category as determined by the most recent
17 State Occupational Employment and Wage Estimates for this state
18 published by the United States Department of Labor's Bureau of
19 Labor Statistics.

20 (e) "In-state expenditures" means the costs of tangible
21 property used in this state and services performed by residents
22 of this state for a scripted production, including preproduction
23 and postproduction, but excluding costs for development,
24 marketing, and distribution.

25 (f) "President" means the chief executive officer of the
26 corporation.

27 (g) "Scripted production" or "production" means a feature
28 film at least 70 minutes in length, whether produced for
29 theatrical, television, or direct-to-video release; a television
30 series created to run multiple seasons having an order for
31 distribution of at least five episodes; or a miniseries, which
32 is produced predominately from a written screenplay or teleplay.
33 The term does not include a commercial, an infomercial, or a
34 political advertisement; a reality show; a game show; an awards
35 show; a music video; an industrial or educational film; a
36 weather or market program; a sporting event or sporting event
37 broadcast; a gala; a production that solicits funds; a home
38 shopping program; a political program; a documentary; a
39 gambling-related production; a concert production; a local,



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40 regional, or Internet-distributed-only news show or current-
41 events show; a sports news or sports recap show; a video game; a
42 pornographic production; or any production deemed obscene under
43 chapter 847.

44 (h) "Television" includes broadcast, cable, and Internet
45 television.

46 (2) CORPORATION.—The Florida Motion Picture Capital
47 Corporation is created as a nonprofit corporation, to be
48 incorporated under chapter 617 and approved by the Department of
49 State. The corporation shall be organized on a nonstock basis.
50 The purpose of the corporation is to encourage the use of this
51 state as a site for scripted productions by providing financing
52 to such productions. The corporation is subject to the
53 provisions of chapter 119 relating to public records and the
54 provisions of chapter 286 relating to public meetings and
55 records.

56 (3) POWERS AND LIMITATIONS.—

57 (a) The corporation is authorized to provide financing to
58 scripted productions in this state pursuant to the criteria,
59 bylaws, rules, and policies adopted by the board, which must
60 include the following:

61 1. The corporation shall provide financing to productions
62 that it estimates will generate the greatest economic impact to
63 this state.

64 2. The amount of financing provided to a production must
65 not exceed the amount of the production's in-state expenditures
66 for that production.

67 3. The financing provided to a production must rank and
68 remain pari passu with the highest class of ownership in the



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69 production, such that, in the event of liquidation or
70 bankruptcy, the corporation's investment shares the highest
71 priority with other preferred shareholders.

72 4. Any financing provided under this section must be less
73 than one-half of the cost of the production's total shares or
74 other ownership interest.

75 5. The amount of financing provided to any one production
76 must not exceed 12.5 percent of the sum of the remaining amount
77 of uncommitted funds in the account plus the amounts of all
78 outstanding investments in other productions.

79 6. The corporation may not have any voting rights, creative
80 control, or management authority over a production receiving
81 financing under this section.

82 7. The corporation shall limit the return on its
83 investments by establishing variable limits on returns that
84 account for time value and reduce returns in exchange for a
85 production's early buyout of financing positions. For a
86 production exercising an early buyout, the corporation shall
87 limit its return on investment to the minimum that is
88 actuarially measurable and credible and sufficiently related to
89 actual and expected losses to ensure the corporation's self-
90 sufficiency and preservation of the state appropriations
91 provided for the investment.

92 8. The corporation shall establish an application process
93 and conduct at least two application periods per fiscal year,
94 providing no more than 40 percent of the total funds in the
95 account for the fiscal year to productions in any one
96 application period.

97 (b) The board shall adopt objective criteria for evaluating



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98 applications for financing scripted productions in this state.

99 1. The criteria must require:

100 a. The production to use a bonded third-party collection
101 account management firm to ensure that the corporation receives
102 all funds due from sales proceeds in accordance with a waterfall
103 agreement included in the corporation's investment terms.

104 b. Presales or sales estimates from a sales agency that has
105 sold at least \$50 million in feature films which are based on
106 the cast and script of the production and which reflect a value
107 of at least 1.5 times the exposure of the corporation.

108 c. The production to carry an insurance package from an
109 insurance company rated "A" or higher by A.M. Best Company which
110 must include general liability insurance, workers' compensation,
111 and key cast and director insurance that covers the costs of
112 disruption or replacement downtime in the event of illness or
113 other loss of services from such individuals. If at least 75
114 percent of the production's filming schedule occurs after June 1
115 and before November 30, the production's insurance package must
116 include hurricane coverage.

117 d. The production to provide proof of funds for the
118 remaining budget within 60 days after application approval and
119 place the remaining budget in escrow before the release of
120 corporation funds.

121 e. That the lead producer or production company has
122 completed, sold, and delivered at least five feature films, or
123 the production must provide a completion bond.

124 f. That the production's budget, script, and filming
125 schedule have been evaluated and approved by a production expert
126 selected by the board.



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127 g. The production budget to include contingency funds in an
128 amount equal to at least 5 percent of the total budget. Up to 40
129 percent of the contingency funds may be expended during
130 production without the approval of the board. The remaining
131 contingency funds may only be expended with prior approval of
132 the board.

133 h. The board to release corporation funds to a production
134 in the following manner:

135 (I) Fifty percent of corporation funds shall be released on
136 the first day of principal photography.

137 (II) Twenty-five percent of corporation funds shall be
138 released upon completion of principal photography.

139 (III) Twenty-five percent of corporation funds shall be
140 released after final picture lock, as that term is generally
141 understood in the production industry.

142 i. The production company to provide the board with the
143 right to inspect and audit the weekly cost reports and general
144 ledger of the production throughout preproduction, production,
145 and postproduction.

146 2. Preference shall be given to:

147 a. Productions that will generate the greatest comparative
148 economic impact for this state. The corporation shall make a
149 determination of each project's comparative economic impact to
150 this state by comparing the project budgets submitted during the
151 application period and determining which projects create the
152 greatest number of high-wage jobs for state residents and
153 propose the most significant in-state expenditures as a
154 percentage of total production expenditures.

155 b. Productions in which the proposed financing by the



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156 corporation is lowest as a percentage of the production's total
157 shares or other ownership interest.

158 c. Productions with the quickest deployment, in which the
159 production's in-state expenditures will begin soonest after the
160 corporation commits to financing.

161 d. Productions by companies with a verifiable track record
162 in producing successful productions.

163 e. Productions by production companies based in this state
164 or by producers, writers, or directors who are residents of this
165 state.

166 f. Productions expected to significantly increase tourism
167 to the state by using a screenplay or teleplay based on a
168 Florida story or including recognizable locations in this state.

169 g. Productions whose development demonstrates the
170 likelihood of success, including, but not limited to, having a
171 recognized director, actor, or other creative talent attached to
172 the production.

173 h. Productions in which the corporation's financing is
174 matched from local sources, including, but not limited to,
175 county or municipal agencies, local film commissions, or other
176 community resources.

177 (c) The corporation may charge fees, including, but not
178 limited to, application fees from productions seeking financing
179 under this section, but such fees may not exceed the reasonable
180 estimated cost of the activity for which the fee is charged,
181 such as the cost of processing an application.

182 (4) BOARD OF DIRECTORS; POWERS AND DUTIES.—

183 (a)1. The board shall consist of seven members who are
184 permanent residents of this state. Minority and gender



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185 representation must be considered when making appointments to
186 the board. The board shall be composed of the following:

187 a. Two members who have experience in investment banking
188 and funds management focused on feature film and television
189 production.

190 b. Three members who have recent experience and are
191 recognized leaders in the production of feature films or
192 television in this state. Such members may include, but are not
193 limited to, producers, directors, production managers or
194 supervisors, or similar persons in positions of production
195 leadership.

196 c. One member who represents businesses that provide
197 supplies for feature film and television production in this
198 state, such as small businesses through which productions buy or
199 rent equipment, house and feed cast and crew, purchase supplies
200 and raw materials, or build production infrastructure.

201 d. One member who represents this state's feature film and
202 television workforce.

203 2. The initial board shall be appointed as follows:

204 a. The Florida Venture Forum and the Florida Chamber of
205 Commerce shall each appoint one member pursuant to sub-
206 paragraph 1.a.

207 b. The Governor, the President of the Senate, and the
208 Speaker of the House of Representatives shall each appoint one
209 member pursuant to sub-subparagraph 1.b.

210 c. The department shall appoint one member pursuant to sub-
211 paragraph 1.c.

212 d. The Congress of Motion Picture Associations of Florida
213 shall appoint one member pursuant to sub-subparagraph 1.d.



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214
215 To establish staggered terms, the initial members appointed by
216 the Florida Chamber of Commerce and the Congress of Motion
217 Picture Associations of Florida shall be appointed to 1-year
218 terms; the initial members appointed by the President of the
219 Senate and the Speaker of the House of Representatives shall be
220 appointed to 2-year terms; and the initial members appointed by
221 the Governor, the department, and the Florida Venture Forum
222 shall be appointed to 3-year terms.

223 3. Board members shall serve for a term of 3 years and are
224 eligible for reappointment. Vacancies shall be filled by
225 appointment in the same manner as the member whose position is
226 being filled. Vacancies shall be filled within 30 days after the
227 date of the vacancy. A vacancy that occurs before the scheduled
228 expiration of the term of a member shall be filled for the
229 remainder of the unexpired term.

230 (b) Board members are subject to the Code of Ethics for
231 Public Officers and Employees as set forth in part III of
232 chapter 112. A board member must abstain from voting and comply
233 with the disclosure requirements of s. 112.3143 if there appears
234 to be a possible conflict under s. 112.311, s. 112.313, or s.
235 112.3143. This paragraph does not prohibit any principal by whom
236 a board member is retained, as defined in s. 112.3143(1)(a),
237 from applying for or receiving financing under this section.

238 (c) A board member must, with respect to an application for
239 financing which is currently pending before the corporation or
240 which the board member knows or reasonably expects will be
241 submitted to the corporation within 180 days, refrain from
242 commenting on or discussing the application outside of a board



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243 meeting with the applicant or any person retained by the
244 applicant.

245 (d) Board members shall serve without compensation but may
246 be reimbursed in accordance with s. 112.061 for all necessary
247 expenses in the performance of their duties, including attending
248 board meetings and conducting board business.

249 (e) The board shall:

250 1. Before the expenditure of funds from the account, adopt
251 bylaws, rules, and policies that are necessary to carry out the
252 corporation's responsibilities under this section.

253 2. Hold regularly scheduled meetings, at least once per
254 application period, in order to carry out the objectives and
255 responsibilities of the board.

256 (5) ACCOUNT.—

257 (a) The board shall create the account for the purpose of
258 receiving state, federal, county, municipal, and private
259 financial resources, and the returns from productions financed
260 by allocations from those resources, and for the purposes of
261 this section. The account shall be under the exclusive control
262 of the board.

263 (b) Appropriations provided to the corporation for
264 financing productions shall be deposited into the account.

265 (c) The board may deposit the funds of the account with
266 state or federally chartered financial institutions in this
267 state and may invest any funds not allocated to a production
268 during a fiscal year in permissible securities as described in
269 s. 560.210(1).

270 (d) Dividend payments received from the investments made by
271 the corporation shall be redeposited into the account to be used



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272 for the purposes of this section.

273 (e) The corporation shall keep its operating expenses to
274 the minimum amount necessary. Such operating expenses shall be
275 funded by appropriations provided for that purpose and from net
276 returns from financing provided under this section.

277 (f) Any claims against the account shall be paid solely
278 from the account. Under no circumstances shall the credit of the
279 state be pledged other than funds appropriated by law to the
280 account, nor shall the state be liable or obligated in any way
281 for claims on the account or against the corporation.

282 (6) PRESIDENT OF THE CORPORATION.—

283 (a) The board shall appoint a president. The president must
284 be knowledgeable about private and public financing of feature
285 film and television projects.

286 (b) The president shall serve at the pleasure of the board
287 and shall receive a salary and benefits as fixed by the board.
288 The president's salary and benefits may not exceed the salary
289 and benefits authorized to be paid to the Governor.

290 (c) The president shall administer the programs of the
291 corporation and perform such duties as delegated by the board.

292 (d) The president shall provide support staff to the board
293 as requested.

294 (e) The president shall submit an annual budget to be
295 approved by the board.

296 (7) PUBLIC NOTICE OF FINANCING; ANNUAL REPORT; AUDIT.—

297 (a) The corporation shall notify the department upon final
298 execution of each contract or agreement by which the corporation
299 provides financing to a production. The corporation shall also
300 publish and maintain a copy of the notice on the corporation's



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301 website while the financing remains outstanding. To provide
302 adequate notice to the businesses and workforce that supply
303 feature film and television production in this state, the notice
304 must include, but need not be limited to, a brief description of
305 the production, the name of the production company, and, to the
306 extent available, the names of the director, cinematographer,
307 production designer, costume designer, and transportation
308 coordinator.

309 (b) The corporation shall submit a report to the department
310 on all corporation activities for the previous fiscal year as a
311 supplement to the department's annual report required under s.
312 20.60. This supplemental report must include:

313 1. A status report on all projects currently being financed
314 through the corporation, the number of projects financed
315 pursuant to this section, the dollar amount of financing
316 provided to such projects, and the names of the recipients; and

317 2. Information as to the economic impact of the projects
318 financed by the corporation.

319 (c) The Auditor General shall annually conduct a financial
320 audit, as defined in s. 11.45, of the corporation and the
321 account.

322 Section 2. Paragraph (b) of subsection (10) of section
323 20.60, Florida Statutes, is amended to read

324 20.60 Department of Economic Opportunity; creation; powers
325 and duties.-

326 (10) The department, with assistance from Enterprise
327 Florida, Inc., shall, by November 1 of each year, submit an
328 annual report to the Governor, the President of the Senate, and
329 the Speaker of the House of Representatives on the condition of



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330 the business climate and economic development in the state.

331 (b) The report must incorporate annual reports of other
332 programs, including:

333 1. Information provided by the Department of Revenue under
334 s. 290.014.

335 2. Information provided by enterprise zone development
336 agencies under s. 290.0056 and an analysis of the activities and
337 accomplishments of each enterprise zone.

338 3. The Economic Gardening Business Loan Pilot Program
339 established under s. 288.1081 and the Economic Gardening
340 Technical Assistance Pilot Program established under s.
341 288.1082.

342 4. A detailed report of the performance of the Black
343 Business Loan Program and a cumulative summary of quarterly
344 report data required under s. 288.714.

345 5. The Rural Economic Development Initiative established
346 under s. 288.0656.

347 6. The Florida Unique Abilities Partner Program.

348 7. The Florida Motion Picture Capital Corporation
349 established under s. 288.1259.

350 Section 3. This act shall take effect July 1, 2018.

351
352 ===== T I T L E A M E N D M E N T =====

353 And the title is amended as follows:

354 Delete everything before the enacting clause
355 and insert:

356 A bill to be entitled
357 An act relating to film and television production;
358 creating s. 288.1259, F.S.; defining terms;



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359 establishing the Florida Motion Picture Capital
360 Corporation to encourage the use of this state as a
361 site for scripted productions by providing financing
362 to certain productions; providing powers of and
363 imposing limitations on the corporation; requiring the
364 board of directors to adopt specified criteria for
365 evaluating applications for financing; requiring
366 productions to use a bonded third-party collection
367 account management firm; requiring that certain
368 presales or sales estimates meet a specified minimum
369 value; requiring productions to carry an insurance
370 package meeting certain standards; requiring
371 productions to provide certain proof of funds within a
372 specified period; requiring that the lead producer or
373 production company have a specified sales record or
374 provide a completion bond; requiring that certain
375 items be evaluated and approved by a production expert
376 selected by the board; requiring that the production
377 budget include a certain amount of contingency funds;
378 providing for the release of corporation funds
379 according to a specified schedule; requiring the board
380 to approve the expenditure of certain contingency
381 funds; requiring the board to release corporation
382 funds to a production in a specified manner; requiring
383 the production company to allow the board to inspect
384 and audit certain reports and ledgers within a certain
385 timeframe; requiring the board to give preference to
386 productions that meet specified criteria; authorizing
387 the corporation to charge certain fees; requiring the



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388 board to be composed of certain members; providing for
389 the appointment of the board, terms for the board, and
390 guidelines for the board; prohibiting board members
391 from discussing certain pending applications with
392 applicants outside of a board meeting for a specified
393 period; requiring board members to serve without
394 compensation; authorizing the board members to be
395 reimbursed for certain expenses; requiring the board
396 to adopt bylaws, rules, and policies before the
397 expenditure of funds; requiring the board to hold
398 regularly scheduled meetings; requiring the board to
399 create the Florida Motion Picture Capital Account and
400 maintain exclusive control of the account; authorizing
401 the board to deposit funds with certain institutions
402 and to invest certain funds in permissible securities;
403 requiring that certain dividend payments be
404 redeposited in the account for a specified purpose;
405 requiring that the corporation's operating expenses be
406 kept to a minimum and funded by appropriations and
407 certain net returns; requiring that a claim against
408 the account be solely paid from the account; requiring
409 the board to appoint a president who meets specified
410 criteria; limiting the salary and benefits of the
411 president; providing the powers and duties of the
412 president; requiring the corporation to provide
413 certain notice of financing contracts or agreements to
414 the Department of Economic Opportunity and on the
415 corporation's website for a specified period of time;
416 requiring that the notice include specified



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417 information; requiring the corporation to submit a
418 supplemental report to the department which contains
419 certain information; requiring the Auditor General to
420 conduct an annual financial audit of the corporation
421 and the account; amending s. 20.60, F.S.; conforming a
422 provision to changes made by the act; providing an
423 effective date.

By Senator Taddeo

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1 A bill to be entitled
 2 An act relating to film and television production;
 3 creating s. 288.1259, F.S.; defining terms;
 4 establishing the Florida Motion Picture Capital
 5 Corporation to encourage the use of this state as a
 6 site for scripted productions by providing financing
 7 to certain productions; providing powers of the
 8 corporation; requiring the board of directors to adopt
 9 specified criteria for evaluating a financing
 10 application; requiring the production to use a bonded
 11 third-party collection account management firm;
 12 requiring that certain presales or sales estimates
 13 meet a specified minimum value; requiring a production
 14 to carry an insurance package meeting certain
 15 standards; requiring a production to provide certain
 16 proof of funds within a specified period; requiring
 17 the lead producer or production company to have a
 18 specified sales record or provide a completion bond;
 19 requiring that certain items be evaluated and approved
 20 by a production expert selected by the board;
 21 requiring the production budget to include a certain
 22 amount of contingency funds; providing for the release
 23 of corporation funds according to a specified
 24 schedule; requiring the board to approve the
 25 expenditure of certain contingency funds; requiring
 26 the board to release corporation funds to a production
 27 in a specified manner; requiring the production
 28 company to allow the board to inspect and audit
 29 certain reports and ledgers within a certain

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

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30 timeframe; requiring the board to give preference to
 31 productions that meet specified criteria; authorizing
 32 the corporation to charge certain fees; requiring the
 33 board to be composed of certain members; providing for
 34 the appointment of the initial board, terms for the
 35 board, and guidelines for the board; prohibiting a
 36 board member from discussing certain pending
 37 applications with applicants outside of a board
 38 meeting for a specified period; requiring a board
 39 member to serve without compensation; authorizing the
 40 board members to be reimbursed for certain expenses;
 41 requiring the board to adopt bylaws, rules, and
 42 policies before the expenditure of funds; requiring
 43 the board to hold regularly scheduled meetings;
 44 requiring the board to create the Florida Motion
 45 Picture Capital Account and maintain exclusive control
 46 of the account; authorizing the board to deposit funds
 47 with certain institutions and to invest certain funds
 48 in permissible securities; requiring that certain
 49 dividend payments be redeposited in the account for a
 50 specified purpose; requiring that the corporation's
 51 operating expenses be kept to a minimum and funded by
 52 appropriations and certain net returns; requiring that
 53 a claim against the account be solely paid from the
 54 account; requiring the board to appoint a president
 55 who meets specified criteria; providing the powers and
 56 duties of the president; requiring the corporation to
 57 provide certain notice of financing contracts or
 58 agreements to the Department of Economic Opportunity

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59 and on the corporation's website for a specified
60 period of time; requiring that the notice include
61 specified information; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Section 288.1259, Florida Statutes, is created
66 to read:

67 288.1259 Florida Motion Picture Capital Corporation.—

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

69 (a) "Account" means the Florida Motion Picture Capital
70 Account.

71 (b) "Board" means the corporation's board of directors.

72 (c) "Corporation" means the Florida Motion Picture Capital
73 Corporation.

74 (d) "High-wage jobs" are jobs that pay at least 120 percent
75 of the median wage for the arts, design, entertainment, sports,
76 and media occupations category as determined by the most recent
77 State Occupational Employment and Wage Estimates for this state
78 published by the United States Department of Labor's Bureau of
79 Labor Statistics.

80 (e) "In-state expenditures" means the costs of tangible
81 property used in this state and services performed by residents
82 of this state for a scripted production, including preproduction
83 and postproduction, but excluding costs for development,
84 marketing, and distribution.

85 (f) "President" means the chief executive officer of the
86 corporation.

87 (g) "Scripted production" or "production" means a feature

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88 film at least 70 minutes in length, whether produced for
89 theatrical, television, or direct-to-video release; a television
90 series created to run multiple seasons having an order for
91 distribution of at least five episodes; or a miniseries, which
92 is produced predominately from a written screenplay or teleplay.
93 The term does not include a commercial, an infomercial, or a
94 political advertisement; a reality show; a game show; an awards
95 show; a music video; an industrial or educational film; a
96 weather or market program; a sporting event or sporting event
97 broadcast; a gala; a production that solicits funds; a home
98 shopping program; a political program; a documentary; a
99 gambling-related production; a concert production; a local,
100 regional, or Internet-distributed-only news show or current-
101 events show; a sports news or sports recap show; a video game; a
102 pornographic production; or any production deemed obscene under
103 chapter 847.

104 (h) "Television" includes broadcast, cable, and Internet
105 television.

106 (2) CORPORATION.—The Florida Motion Picture Capital
107 Corporation is created as a nonprofit corporation, to be
108 incorporated under chapter 617 and approved by the Department of
109 State. The corporation shall be organized on a nonstock basis.
110 The purpose of the corporation is to encourage the use of this
111 state as a site for scripted productions by providing financing
112 to such productions.

113 (3) POWERS AND LIMITATIONS.—

114 (a) The corporation is authorized to provide financing to
115 scripted productions in this state pursuant to the criteria,
116 bylaws, rules, and policies adopted by the board, which must

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117 include the following:

118 1. The corporation shall provide financing to productions
 119 that it estimates will generate the greatest economic impact to
 120 this state.

121 2. The amount of financing provided to a production must
 122 not exceed the amount of the production's in-state expenditures
 123 for that production.

124 3. The financing provided to a production must rank and
 125 remain pari passu with the highest class of ownership in the
 126 production, such that, in the event of liquidation or
 127 bankruptcy, the corporation's investment shares the highest
 128 priority with other preferred shareholders.

129 4. Any financing provided under this section must be less
 130 than one-half of the cost of the production's total shares or
 131 other ownership interest.

132 5. The amount of financing provided to any one production
 133 must not exceed 12.5 percent of the sum of the remaining amount
 134 of uncommitted funds in the account plus the amounts of all
 135 outstanding investments in other productions.

136 6. The corporation may not have any voting rights, creative
 137 control, or management authority over a production receiving
 138 financing under this section.

139 7. The corporation shall limit the return on its
 140 investments by establishing variable limits on returns that
 141 account for time value and reduce returns in exchange for a
 142 production's early buyout of financing positions. For a
 143 production exercising an early buyout, the corporation shall
 144 limit its return on investment to the minimum that is
 145 actuarially measurable and credible and sufficiently related to

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146 actual and expected losses to ensure the corporation's self-
 147 sufficiency and preservation of the state appropriations
 148 provided for the investment.

149 8. The corporation shall establish an application process
 150 and conduct at least two application periods per fiscal year,
 151 providing no more than 40 percent of the total funds in the
 152 Florida Motion Picture Capital Account for the fiscal year to
 153 productions in any one application period.

154 (b) The board shall adopt objective criteria for evaluating
 155 applications for financing scripted productions in this state.

156 1. The criteria must require:

157 a. The production to use a bonded third-party collection
 158 account management firm to ensure that the corporation receives
 159 all funds due from sales proceeds in accordance with a waterfall
 160 agreement included in the corporation's investment terms.

161 b. Presales or sales estimates from a sales agency that has
 162 sold at least \$50 million in feature films which are based on
 163 the cast and script of the production and which reflect a value
 164 of at least 1.5 times the exposure of the corporation.

165 c. The production to carry an insurance package from an
 166 insurance company rated "A" or higher by A.M. Best Company which
 167 must include general liability insurance, workers' compensation,
 168 and key cast and director insurance that covers the costs of
 169 disruption or replacement downtime in the event of illness or
 170 other loss of services from such individuals. If at least 75
 171 percent of the production's filming schedule occurs after June 1
 172 and before November 30, the production's insurance package must
 173 include hurricane coverage.

174 d. The production to provide proof of funds for the

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175 remaining budget within 60 days after application approval and
 176 place the remaining budget in escrow before the release of
 177 corporation funds.

178 e. That the lead producer or production company has
 179 completed, sold, and delivered at least five feature films, or
 180 the production must provide a completion bond.

181 f. That the production's budget, script, and filming
 182 schedule have been evaluated and approved by a production expert
 183 selected by the board.

184 g. The production budget to include contingency funds in an
 185 amount equal to at least 5 percent of the total budget. Up to 40
 186 percent of the contingency funds may be expended during
 187 production without the approval of the board. The remaining
 188 contingency funds may only be expended with prior approval of
 189 the board.

190 h. The board to release corporation funds to a production
 191 in the following manner:

192 (I) Fifty percent of corporation funds shall be released on
 193 the first day of principal photography.

194 (II) Twenty-five percent of corporation funds shall be
 195 released upon completion of principal photography.

196 (III) Twenty-five percent of corporation funds shall be
 197 released after final picture lock, as that term is generally
 198 understood in the production industry.

199 i. The production company to provide the board with the
 200 right to inspect and audit the weekly cost reports and general
 201 ledger of the production throughout preproduction, production,
 202 and postproduction.

203 2. Preference shall be given to:

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204 a. Productions that will generate the greatest comparative
 205 economic impact for this state. The corporation shall make a
 206 determination of each project's comparative economic impact to
 207 this state by comparing the project budgets submitted during the
 208 application period and determining which projects create the
 209 greatest number of high-wage jobs for state residents and
 210 propose the most significant in-state expenditures as a
 211 percentage of total production expenditures.

212 b. Productions in which the proposed financing by the
 213 corporation is lowest as a percentage of the production's total
 214 shares or other ownership interest.

215 c. Productions with the quickest deployment, in which the
 216 production's in-state expenditures will begin soonest after the
 217 corporation commits to financing.

218 d. Productions by companies with a verifiable track record
 219 in producing successful productions.

220 e. Productions by production companies based in this state
 221 or by producers, writers, or directors who are residents of this
 222 state.

223 f. Productions expected to significantly increase tourism
 224 to the state by using a screenplay or teleplay based on a
 225 Florida story or including recognizable locations in this state.

226 g. Productions whose development demonstrates the
 227 likelihood of success, including, but not limited to, having a
 228 recognized director, actor, or other creative talent attached to
 229 the production.

230 h. Productions in which the corporation's financing is
 231 matched from local sources, including, but not limited to,
 232 county or municipal agencies, local film commissions, or other

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233 community resources.

234 (c) The corporation may charge fees, including, but not
 235 limited to, application fees from productions seeking financing
 236 under this section, but such fees may not exceed the reasonable
 237 estimated cost of the activity for which the fee is charged,
 238 such as the cost of processing an application.

239 (4) BOARD OF DIRECTORS; POWERS AND DUTIES.-

240 (a)1. The board shall consist of seven members who are
 241 permanent residents of this state. Minority and gender
 242 representation must be considered when making appointments to
 243 the board. The board shall be composed of the following:

244 a. Two members who have experience in investment banking
 245 and funds management focused on feature film and television
 246 production.

247 b. Three members who have recent experience and are
 248 recognized leaders in the production of feature films or
 249 television in this state. Such members may include, but are not
 250 limited to, producers, directors, production managers or
 251 supervisors, or similar persons in positions of production
 252 leadership.

253 c. One member who represents businesses that provide
 254 supplies for feature film and television production in this
 255 state, such as small businesses through which productions buy or
 256 rent equipment, house and feed cast and crew, purchase supplies
 257 and raw materials, or build production infrastructure.

258 d. One member who represents this state's feature film and
 259 television workforce.

260 2. The initial board shall be appointed as follows:

261 a. The Florida Venture Forum and the Florida Chamber of

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262 Commerce shall each appoint one member pursuant to sub-
 263 paragraph 1.a.

264 b. The Governor, the President of the Senate, and the
 265 Speaker of the House of Representatives shall each appoint one
 266 member pursuant to sub-subparagraph 1.b.

267 c. The department shall appoint one member pursuant to sub-
 268 paragraph 1.c.

269 d. The Congress of Motion Picture Associations of Florida
 270 shall appoint one member pursuant to sub-subparagraph 1.d.

271
 272 To establish staggered terms, the initial members appointed by
 273 the Florida Chamber of Commerce and the Congress of Motion
 274 Picture Associations of Florida shall be appointed to 1-year
 275 terms; the initial members appointed by the President of the
 276 Senate and the Speaker of the House of Representatives shall be
 277 appointed to 2-year terms; and the initial members appointed by
 278 the Governor, the department, and the Florida Venture Forum
 279 shall be appointed to 3-year terms.

280 3. Board members shall serve for a term of 3 years and are
 281 eligible for reappointment. Vacancies shall be filled by the
 282 board within 30 days after the date of the vacancy. A vacancy
 283 that occurs before the scheduled expiration of the term of a
 284 member shall be filled for the remainder of the unexpired term.

285 (b) Board members are subject to the Code of Ethics for
 286 Public Officers and Employees as set forth in part III of
 287 chapter 112. A board member must abstain from voting and comply
 288 with the disclosure requirements of s. 112.3143 if there appears
 289 to be a possible conflict under s. 112.311, s. 112.313, or s.
 290 112.3143. This paragraph does not prohibit any principal by whom

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291 a board member is retained, as defined in s. 112.3143(1) (a),
 292 from applying for or receiving financing under this section.
 293 (c) A board member must, with respect to an application for
 294 financing which is currently pending before the corporation or
 295 which the board member knows or reasonably expects will be
 296 submitted to the corporation within 180 days, refrain from
 297 commenting on or discussing the application outside of a board
 298 meeting with the applicant or any person retained by the
 299 applicant.
 300 (d) Board members shall serve without compensation but may
 301 be reimbursed in accordance with s. 112.061 for all necessary
 302 expenses in the performance of their duties, including attending
 303 board meetings and conducting board business.
 304 (e) The board shall:
 305 1. Before the expenditure of funds from the Florida Motion
 306 Picture Capital Account, adopt bylaws, rules, and policies that
 307 are necessary to carry out the corporation's responsibilities
 308 under this section.
 309 2. Hold regularly scheduled meetings, at least once per
 310 application period, in order to carry out the objectives and
 311 responsibilities of the board.
 312 (5) ACCOUNT.-
 313 (a) The board shall create the Florida Motion Picture
 314 Capital Account for the purpose of receiving state, federal,
 315 county, municipal, and private financial resources, and the
 316 returns from productions financed by allocations from those
 317 resources, and for the purposes of this section. The account
 318 shall be under the exclusive control of the board.
 319 (b) Appropriations provided to the corporation for

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320 financing productions shall be deposited into the account.
 321 (c) The board may deposit the funds of the account with
 322 state or federally chartered financial institutions in this
 323 state and may invest any funds not allocated to a production
 324 during a fiscal year in permissible securities as described in
 325 s. 560.210(1).
 326 (d) Dividend payments received from the investments made by
 327 the corporation shall be redeposited into the account to be used
 328 for the purposes of this section.
 329 (e) The corporation shall keep its operating expenses to
 330 the minimum amount necessary. Such operating expenses shall be
 331 funded by appropriations provided for that purpose and from net
 332 returns from financing provided under this section.
 333 (f) Any claims against the account shall be paid solely
 334 from the account. Under no circumstances shall the credit of the
 335 state be pledged other than funds appropriated by law to the
 336 account, nor shall the state be liable or obligated in any way
 337 for claims on the account or against the corporation.
 338 (6) PRESIDENT OF THE CORPORATION.-
 339 (a) The board shall appoint a president. The president must
 340 be knowledgeable about private and public financing of feature
 341 film and television projects.
 342 (b) The president shall serve at the pleasure of the board
 343 and shall receive a salary and benefits as fixed by the board.
 344 (c) The president shall administer the programs of the
 345 corporation and perform such duties as delegated by the board.
 346 (d) The president shall provide support staff to the board
 347 as requested.
 348 (e) The president shall submit an annual budget to be

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349 approved by the board.

350 (7) PUBLIC NOTICE OF FINANCING.—The corporation shall
351 notify the department upon final execution of each contract or
352 agreement by which the corporation provides financing to a
353 production. The corporation shall also publish and maintain a
354 copy of the notice on the corporation's website while the
355 financing remains outstanding. To provide adequate notice to the
356 businesses and workforce that supply feature film and television
357 production in this state, the notice must include, but need not
358 be limited to, a brief description of the production, the name
359 of the production company, and, to the extent available, the
360 names of the director, cinematographer, production designer,
361 costume designer, and transportation coordinator.

362 Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/20/2018
Meeting Date

1606
Bill Number (if applicable)
S33118
Amendment Barcode (if applicable)

Topic Film and Television Production

Name Melissa Faust

Job Title Deputy Director of Policy

Address 200 W College Ave, Ste 109
Street

Phone 850-408-1218

Tallahassee FL 32301
City State Zip

Email mfaust@afphq.org

Speaking: For Against Information

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

Representing Americans for Prosperity

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)

2/20/2018

Meeting Date

1606

Bill Number (if applicable)

Topic Film and Television Production

Amendment Barcode (if applicable)

Name Melissa Fausz

Job Title Deputy Director of Policy

Address 200 W College Ave, Ste 109

Phone 850-408-1218

Tallahassee FL 32301
City State Zip

Email mfausz@2fphq.org

Speaking: For Against Information

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

Representing Americans for Prosperity

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)

2/20/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic Florida Motion Picture Capital Corp.

Amendment Barcode (if applicable)

Name CHRIS RANONG

Job Title Chair

Address 403 SHAMROCK ROAD

Phone 904/806-6369

Street

ST. AUGUSTINE, FLORIDA 32086

Email chrISRANONG@aol.com

City

State

Zip

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

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

Representing COMPASS - The Congress of Motion Picture Associations

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/20/2018

Meeting Date

SB 1606

Bill Number (if applicable)

Topic Film and Television Production

Amendment Barcode (if applicable)

Name Rebecca DeLaRosa

Job Title Director

Address 301 N Olive Ave

Phone 561-355-3451

Street

West Palm Beach

FL

33401

Email rdejarosa@pbcgov.org

City

State

Zip

Speaking: For Against Information

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

Representing Palm Beach County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/20/18

Meeting Date

SB 1606

Bill Number (if applicable)

Topic Film + Television Production

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland FL 33802

City

State

Zip

Email sheppstrategy.com

Speaking: For Against Information

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

Representing Feld Entertainment

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

2-20-18

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

1606

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Miami-Dade County

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-20-18

Meeting Date

1606

Bill Number (if applicable)

Topic FILM INDUSTRY PRODUCTION

Amendment Barcode (if applicable)

Name LADRA YOUNG

Job Title _____

Address 100 N. MURPHY

Street

Phone 294-1838

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2-20-18

Meeting Date

SB1606

Bill Number (if applicable)

Topic FILM & TV Production

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title

Address 2861 Executive Dr. #100

Phone 727-560-3323

Street

City Clearwater FL 33762

Email jack@themallardgroup.com

Speaking: For Against Information

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

Representing AMERICAN ADVERTISING FEDERATION, 4th DIST

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General
Government
Banking and Insurance
Environmental Preservation and Conservation
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Bill Montford, Chair of the Commerce and Tourism Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: January 17, 2018

I respectfully request that **Senate Bill 1606**, relating to Film and Television Production be placed on the:

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

A handwritten signature in black ink, appearing to be "AT" with a stylized flourish above it.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- 10689 North Kendall Drive, Suite 212, Miami, Florida 33176 (305) 596-3003
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
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/SB 1604

INTRODUCER: Commerce and Tourism Committee and Senator Taddeo

SUBJECT: Public Records/Florida Motion Picture Capital Corporation

DATE: February 20, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Anderson | McKay | CM | Fav/CS |
| 2. | | | GO | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation created in CS/SB 1606 from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effective date is contingent upon, and concurrent with, passage of CS/SB 1606, which will take effect on July 1, 2018.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²³

Trade Secrets

According to s. 812.081(1)(c), F.S.,

“Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.²⁴

III. Effect of Proposed Changes:

CS/SB 1604 excludes certain information provided in financing applications to the Florida Motion Picture Capital Corporation from the public record requirement codified in ch. 119, F.S. Personal financial records, trade secrets, and proprietary information of individuals applying for production financing would be considered confidential and exempt. The public necessity

²¹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 812.081(1)(c), F.S.

statement claims that applicants are more likely to apply to the Florida Motion Picture Capital Corporation if in doing so they would not be putting their competitive advantage at risk.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effective date is contingent upon, and concurrent with, passage of CS/SB 1606, which will take effect on July 1, 2018.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the Legislature for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill provides that personal financial records, trade secrets, and proprietary information is confidential and exempt from s. 119.07(1), F.S.

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 amends s. 288.1259, F.S., as created in CS/SB 1606.

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

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

CS by Commerce and Tourism Committee on February 20, 2018:

An amendment clarified and limited the definitions of trade secrets and personal finances for the purpose of this provision only.

A technical amendment included the bill number for the linked bill, CS/SB 1606, which must pass for this bill to potentially become effective.

B. Amendments:

None.



442132

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 14

and insert:

Florida Statutes, as created by SB 1606, to read:

Delete line 43

and insert:

SB 1606 or similar legislation takes effect, if such legislation



388332

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 16 - 23

and insert:

(8) APPLICATIONS; PUBLIC RECORDS EXEMPTION.-

(a) Personal financial records, trade secrets, and proprietary information of persons applying for financing for a production are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance



388332

11 with s. 119.15 and shall stand repealed on October 2, 2023,
12 unless reviewed and saved from repeal through reenactment by the
13 Legislature.

14 (b) As used in this subsection, the term:

15 1. "Personal financial record" means a record relating to:

16 a. The existence, nature, source, or amount of a person's
17 personal income or expenses;

18 b. A person's personal financial transactions; or

19 c. The existence, identification, nature, or value of a
20 person's assets, liabilities, or net worth.

21 2. "Proprietary information" means information that is
22 owned or controlled by the person applying for financing for a
23 production; that is intended to be or is treated by such person
24 as private, in that the disclosure of the information would
25 cause harm to the person; and that has not been disclosed unless
26 disclosed pursuant to a statutory provision, an order of a court
27 or administrative body, or a private agreement providing that
28 the information may be released to the public.

29 3. "Trade secret" has the same meaning as in s. 688.002,
30 and does not include:

31 a. Any contract or agreement, or an addendum thereto, to
32 which the corporation is a party.

33 b. Financial information related to any contract or
34 agreement, or an addendum thereto, with the corporation. Such
35 financial information includes the amount of money paid, any
36 payment structure or plan, expenditures, incentives, bonuses,
37 fees, and penalties.

38
39 ===== T I T L E A M E N D M E N T =====



388332

40 And the title is amended as follows:
41 Delete line 7
42 and insert:
43 and repeal of the exemption; defining terms; providing
44 a statement of

By Senator Taddeo

40-01129-18

20181604__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 288.1259, F.S.; providing an exemption from public
 4 records requirements for certain application
 5 information submitted to the Florida Motion Picture
 6 Capital Corporation; providing for legislative review
 7 and repeal of the exemption; providing a statement of
 8 public necessity; providing a contingent effective
 9 date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (8) is added to section 288.1259,
 14 Florida Statutes, as created by SB ____, to read:
 15 288.1259 Florida Motion Picture Capital Corporation.—
 16 (8) APPLICATIONS; PUBLIC RECORDS EXEMPTION.—Personal
 17 financial records, trade secrets, and proprietary information of
 18 persons applying for financing for a production are confidential
 19 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 20 Constitution. This subsection is subject to the Open Government
 21 Sunset Review Act in accordance with s. 119.15 and shall stand
 22 repealed on October 2, 2023, unless reviewed and saved from
 23 repeal through reenactment by the Legislature.

24 Section 2. The Legislature finds that it is a public
 25 necessity that personal financial records, trade secrets, and
 26 proprietary information of persons applying for financing by the
 27 Florida Motion Picture Capital Corporation in a production be
 28 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 29 Article I of the State Constitution. If the personal financial

Page 1 of 2

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

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30 records, trade secrets, and proprietary information of persons
 31 applying for financing were subject to disclosure, a chilling
 32 effect on participation would result. There is a strong
 33 likelihood that productions would choose not to apply for
 34 financing from the Florida Motion Picture Capital Corporation.
 35 Since productions are required to make in-state expenditures as
 36 a condition of receiving such financing, the chilling effect
 37 caused by such disclosure would undermine the public purpose of
 38 the Florida Motion Picture Capital Corporation to encourage this
 39 state to be used as a site for scripted productions and would
 40 consequently result in productions being produced outside of the
 41 state.

42 Section 3. This act shall take effect on the same date that
 43 SB ____ or similar legislation takes effect, if such legislation
 44 is adopted in the same legislative session or an extension
 45 thereof and becomes a law.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/2018

Meeting Date

1604

Bill Number (if applicable)

Topic Public Record / FL Motion Picture Capital Corp

Amendment Barcode (if applicable)

Name Melissa Faure

Job Title Deputy Director of Policy

Address 200 W. College Ave, Ste 109

Phone 850-408-1218

Street

Tallahassee

FL

32301

Email mfaure@afphq.org

City

State

Zip

Speaking: For Against Information

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

Representing Americans for Prosperity

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 662

INTRODUCER: Commerce and Tourism Committee and Senators Stargel and Taddeo

SUBJECT: Protection for Vulnerable Investors

DATE: February 20, 2018 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Johnson</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | <u>Little</u> | <u>McKay</u> | <u>CM</u> | Fav/CS |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 662 authorizes a dealer, investment adviser, or associated person to place a delay on a financial transaction or disbursement when there is a reasonable belief that exploitation of a vulnerable investor has occurred, is occurring, or has been attempted. Such delay expires after 15 business days. However, a dealer, investment adviser, or associated person may extend the delay for up to 10 additional business days if the facts and circumstances continue to support a reasonable belief of exploitation. A court of competent jurisdiction is also authorized to extend or shorten the length of the delay at any time.

Under the bill, dealers and investment advisers must:

- Report suspected abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families (DCF) through the Florida Abuse Hotline;
- Report specified information, on a quarterly basis, to the Office of Financial Regulation (OFR) regarding any delays placed and the outcome of such delays according;
- Provide written notice to all parties authorized to transact business on and trusted contacts on the account associated with a delay;
- Make all records relating to a delay or report available to the OFR upon request; and
- Develop and implement a training policy or program that educates associated persons on the recognition, reporting, and prevention of exploitation.

The bill also requires the OFR to annually report information related to delays placed by dealers and investment advisers.

II. Present Situation:

Financial Exploitation of Seniors

With the aging of the U.S. population, financial exploitation of seniors is a serious and growing problem. Senior financial abuse schemes are a \$2.9 billion industry.¹ Financial exploitation is a fast-growing form of abuse of seniors and adults with disabilities. Situations of financial exploitation commonly involve trusted persons in the life of the vulnerable adult. Recent research has found that elder financial exploitation is widespread and expensive, as noted:

- One in nine seniors reported being abused, neglected or exploited in the past 12 months; the rate of financial exploitation is extremely high, with 1 in 20 older adults indicating some form of perceived financial mistreatment occurring in the recent past.
- Elder abuse is vastly under-reported; only one in 44 cases of financial abuse is reported.
- Abused seniors are three times more likely to die and elder abuse victims are four times more likely to go into a nursing home.
- Ninety percent of abusers are family members or trusted others.
- Almost one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them.
- Cognitive impairment and the need for help with activities of daily living make seniors more vulnerable to financial abuse.²

Adult Protective Services/Department of Children and Families

The Adult Protective Services (APS) program, under the Department of Children and Families (DCF), is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act.³ Section 415.101, F.S., provides that the legislative intent of this act is to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. Further, it is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

Handling of Allegations of Abuse, Neglect, or Exploitation

The Florida Abuse Hotline, within the DCF, screens allegations of adult abuse, neglect, and exploitation to determine whether the information meets the criteria of an abuse report. The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to initiate a protective investigation within 24 hours.⁴ Section 415.102, F.S., defines a

¹ National Conference of State Legislatures, *Financial Crimes against the Elderly*, available at <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2016-legislation.aspx> (last visited Feb. 19, 2018).

² National Association of Adult Protective Services Association, *Elder Financial Exploitation*, available at <http://www.napsa-now.org/policy-advocacy/exploitation/> (last visited Feb. 19, 2018).

³ Sections 415.101-415.113, F.S.

⁴ Section 415.104(1), F.S.

“vulnerable adult” as “a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”

For each report it receives, the APS must determine whether the person meets the definition of a vulnerable adult and, if so, whether:

- The person is in need of services;
- There is an indication of abuse, neglect, or exploitation; and
- Protective, treatment, or ameliorative services are necessary to safeguard and ensure the vulnerable adult’s wellbeing.⁵

If exploitation is determined to have occurred, the APS notifies the appropriate law enforcement agency and the state attorney’s office for a possible criminal investigation. The primary function of the APS is to safeguard the vulnerable adult⁶ and law enforcement is responsible for criminal investigations. The APS may obtain a court order when a vulnerable adult lacks the capacity to consent or to refuse services in order to safeguard the vulnerable adult and their assets.

Currently, the APS cannot place a temporary hold on any financial transaction without a court order.⁷

Mandatory Reporting and Immunity

Section 415.1034, F.S., provides a mandatory requirement for any person to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited. Section 415.106, F.S., provides that any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.

Access to Records

Section 415.1045, F.S., provides a protective investigator with access to all relevant medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility, unless specifically prohibited by the vulnerable adult who has capacity to consent. The confidentiality of such documents does not constitute grounds for failure to:

- Report as required by s. 415.1034, F.S.;
- Cooperate with the department in its activities under ss. 415.101-415.113, F.S.;
- Give access to such records or documents; or
- Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

⁵ Section 415.104(2), F.S.

⁶ Department of Children and Families; Protecting Vulnerable Adults, available at <http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults> (last visited Feb. 19, 2018).

⁷ Department of Children and Families, *Analysis of SB 662* (Dec. 6, 2017) (on file with the Senate Banking and Insurance Committee).

If any person refuses to allow a law enforcement officer or the protective investigator to have access to relevant information, the DCF may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.⁸

Release of Confidential Information

In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation are confidential and exempt from public record provisions under s. 119.07(1), F.S. The records may not be disclosed, except as specifically authorized by ss. 415.101-415.113, F.S.,⁹ which provides a few exceptions. Currently, the DCF may not share information concerning open cases or disposition of cases with any third parties other than law enforcement.¹⁰

Any person or organization, including the DCF, may petition the court to make public the records of the DCF pertaining to an investigation of alleged abuse, neglect, or exploitation of a vulnerable adult. The court determines whether good cause exists for public access by balancing the best interests of the vulnerable adult together with the privacy right of other persons identified in the reports against the public interest.¹¹

Criminal Penalties

Section 415.111, F.S., provides that a person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Federal Regulation of Securities

The Securities and Exchange Commission (SEC), created by the federal Securities Act of 1934 ('34 Act), has broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs).¹² The New York Stock Exchange, the NASDAQ Stock Market, the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

⁸ Section 415.1045(5), F.S.

⁹ Section 415.107, F.S.

¹⁰ Department of Children and Families correspondence (Dec. 20, 2017) (on file with Senate Banking and Insurance Committee).

¹¹ Section 415.1071, F.S.

¹² 15 U.S.C. ss. 78c(4) and 78o; U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last visited Feb. 19, 2018).

Generally, any person acting as “broker” or “dealer,” as defined in the ’34 Act, must be registered with the SEC and must join an SRO, like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The ’34 Act broadly defined “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to persons involved in any of the key aspects of a securities transaction, such as solicitation, negotiation, and execution.¹³ A “dealer” is defined as “any person engaged in the business of buying and selling securities... for such person’s own account through a broker or otherwise.”¹⁴ Certain entities in the securities industry are referred to as “broker-dealers” because the institution is a “broker” when executing trades on behalf of a customer, but is a “dealer” when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

FINRA Rules

In April 2015, the FINRA launched its Securities Helpline for Seniors, which has highlighted some of the issues firms are facing relating to senior investors, including how firms respond when they suspect a senior customer is being exploited. Two years later, the helpline had fielded more than 8,600 calls and recovered over \$4.3 million in voluntary reimbursements from firms to customers.¹⁵ In response to this issue, the FINRA proposed rules addressing financial exploitation of specified adults.

In February 2017, the SEC approved the adoption of a new FINRA Rule 2165¹⁶ (Financial Exploitation of Specified Adults) to allow members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. The SEC also adopted amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person (trusted contact) for a customer’s account.¹⁷ Rule 2165 and the amendments to Rule 4512 became effective February 5, 2018. Most broker-dealers in the United States are members of FINRA, and therefore subject to FINRA rules and examinations.

Key Provisions of the Rules¹⁸

The rules provide protections for a specified adult, who is defined as a natural person age 65 or older, or a natural person age 18 or older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. Rule 2165 provides a safe harbor for a member to place a temporary hold on a disbursement of funds

¹³ *Id.*

¹⁴ 15 U.S.C. s. 78c(5).

¹⁵ FINRA, *FINRA Receives SEC Approval on Rule Proposal Addressing Financial Exploitation of Seniors*, available at <http://www.finra.org/newsroom/2017/finra-receives-sec-approval-rule-proposal-addressing-financial-exploitation-seniors> (last visited Feb. 19, 2018).

¹⁶ FINRA, http://finra.complanet.com/en/display/display_main.html?rbid=2403&element_id=12784 (last visited Feb. 19, 2018).

¹⁷ See Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039).

¹⁸ FINRA, *Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors*, available at <http://www.finra.org/industry/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors> (last visited Feb. 19, 2018).

or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. Rule 2165 does not apply to transactions in securities. For example, Rule 2165 would not apply to a customer's order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of an account held at a member's business, then Rule 2165 could apply to the disbursement of the proceeds where the customer is a specified adult and there is reasonable belief of financial exploitation.

The FINRA has stated that, where a questionable disbursement involves less than all assets in an account, a member should not place a blanket hold on the entire account. Each disbursement should be analyzed separately. In addition, the FINRA noted that where a disbursement at issue involves all of the assets of the account (*e.g.*, a transfer request), the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements (*e.g.*, regular bill payments). The FINRA notes that some members intend, for operational reasons, to place a temporary hold or restrictions on an entire account when they have a reasonable belief of financial exploitation regarding a disbursement or disbursements from the account, but also intend to permit legitimate disbursements from the account in these circumstances. The FINRA believes that placing a temporary hold or restrictions on an entire account but allowing legitimate disbursements from the account is consistent with Rule 2165 and members may proceed in such a manner as long as they have procedures reasonably designed to permit legitimate disbursements. The FINRA emphasizes that a member may not avail itself of the Rule 2165 safe harbor if it blocks disbursements where there is not a reasonable belief of financial exploitation regarding such disbursements.

Florida Regulation of Securities

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.¹⁹

In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act. There are 2,607 dealers, 5,984 investment advisers, 10,539 branches, and 319,941 stockbrokers registered in Florida.²⁰

¹⁹ U.S. Securities and Exchange Commission, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Feb. 19, 2018).

²⁰ Office of Financial Regulation, *Fast Facts*, available at <https://www.flofr.com/StaticPages/documents/FastFacts.pdf> (Dec. 2017) (last visited Feb. 19, 2018).

The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:²¹

- “Dealers,” which include:
 - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
 - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities, which are issued or are proposed to be issued by the issuer.²²
- “Investment advisers,” which:
 - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.²³
 - Do not include a “federal covered adviser.”²⁴
- “Associated persons,” which, with respect to a federal covered adviser, includes any person who is an investment adviser representative and who has a place of business in this state, and with respect to a dealer or investment adviser, includes any of the following:
 - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
 - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
 - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 415.1034, F.S., to require dealers, investment advisers, and associated persons to report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF through the Florida Abuse Hotline.

Section 2 creates s. 517.34, F.S., relating to the protection of specified adults.

²¹ Section 517.12(1), F.S.

²² Section 517.021(6)(a), F.S. The term “dealer”, as defined under Florida law, encompasses the definitions of “broker” and “dealer” under federal law.

²³ Section 517.021(14)(a), F.S.

²⁴ Section 517.021(9) and (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice filing to the OFR. ss. 517.021 and 517.1201, F.S.

²⁵ Section 517.021(2), F.S.

Definitions

The bill defines the term “specified adult” as “a natural person who is 65 years of age or older or a vulnerable adult as defined in s. 415.102, F.S.”²⁶ The bill also creates definitions for the terms “exploitation,” “law enforcement agency,” and “trusted contact.”

Delays

A dealer, investment adviser, or associated person may place a delay on a transaction or disbursement related to an account of a specified adult if the dealer, investment adviser, or associated person reasonably believes that the specified adult is being or has been financially exploited. The dealer, investment adviser, or associated person (reporting party) is required to notify the DCF of the suspected exploitation through the agency’s abuse hotline.

Within 3 days of placing a delay, the reporting party must provide written notification to all parties authorized to transact business on the account and any trusted contact on the account, unless the parties are believed to be involved in the suspected exploitation. At minimum, this notification must include a description of the transaction or disbursement, a statement that a delay was placed, the basis for the reasonable belief of exploitation, and an explanation of the delay process.

A delay expires 15 business days after the date the delay is placed. However, the dealer, investment adviser, or associated person may extend the delay up to an additional 10 business days if a review of the available facts and circumstances continue to support the reasonable belief of exploitation. The length of the delay may also be shortened or extended by a court of competent jurisdiction.

Reporting Requirements and Access to Records

A dealer, investment adviser, or associated person must provide notification quarterly to the OFR regarding any delays placed and the outcome of such delays. Upon request, a dealer or investment adviser must also make additional information related to delays or reports available to the OFR.

The quarterly notification provided to the OFR should not contain information identifying the specified adult or other involved parties. The notification must include:

- The name of the firm and person placing the delay on the transaction or disbursement;
- A general description of the reason for placing the delay; and
- The length of the delay and whether the transaction or disbursement ultimately took place.

By October 1 of each year, the OFR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must summarize the information from the quarterly reports of dealers, investment advisers, and associated persons during the previous fiscal year. The bill provides that this reporting requirement will expire on October 1, 2023.

²⁶ Section 415.102, F.S., defines a “vulnerable adult” as “a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”

Under the bill, a dealer, investment adviser, or associated person may provide access to, or copies of, any records that are relevant to the suspected exploitation to the DCF or a law enforcement agency. Notwithstanding any law to the contrary, the DCF may inform the reporting party on the status of its investigation or any final disposition.

Immunity

Absent clear and convincing evidence of a lack of reasonable belief, the bill provides civil and administrative immunity to a dealer, investment adviser, or associated person who acts in accordance with the provisions of the bill. The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. The bill does not limit the right of a dealer, investment adviser, or associated person to refuse or place a delay on a transaction under other laws or rules or under a customer agreement.

Training

Dealers and investment advisers who place delays according to the provisions of the bill, must develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation. Associated persons are required to receive a minimum of 1 hour of training and dealers and investment advisers are required to maintain a written record of compliance with the training requirements.

Under the bill, associated persons must be initially trained by July 1, 2019, and newly hired associated persons must be trained within 3 months after beginning employment. The bill requires all associated persons to be subsequently trained every 2 years.

Section 3 provides the bill takes effect on July 1, 2018.

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. However, the bill will provide additional tools for dealers, investment advisers, and associated persons to protect their senior and other specified adult clients from alleged financial exploitation in a more effective and expedient manner.

C. Government Sector Impact:

Office of Financial Regulation. To implement the bill, the OFR expects to incur costs of approximately \$177,500 to update its existing technology system and to hire one FTE as a Financial Specialist.

Department of Children and Families. The DCF does not anticipate incurring additional costs associated with handling reports of suspected abuse, neglect, or exploitation to the Florida Abuse Hotline.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 415.1034 of the Florida Statutes.
This bill creates section 517.34 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 Commerce and Tourism on February 20, 2018:

The committee substitute:

- Provides definitions for the terms “exploitation” and “trusted contact” and removes the definition for the term “records;”
- Establishes that dealers, investment advisers, and associated persons have the authority to delay a transaction under a reasonable belief of exploitation, rather than a good faith belief;
- Requires dealers and investment advisers to:
 - Report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF’s central abuse hotline;
 - Report specified information, on a quarterly basis, to the OFR regarding any delays placed and the outcome of such delays according;
 - Make all records relating to a delay or report available to the OFR upon request;
 - Provide written notice to all parties authorized to transact business an account associated with a delay; and

- Develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation.
- Removes the provision allowing the DCF or other agencies of competent jurisdiction to shorten or extend the length of a delay on a transaction;
- Requires the OFR to annually report information related to delays placed by dealers and investment advisers to the Legislature; and
- Provides civil and administrative immunity for individuals who place a delay pursuant to the provisions in the bill, unless a lack of reasonable belief is shown by clear and convincing evidence.

B. Amendments:

None.



592426

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/20/2018 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (1) of section
415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or
exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:



592426

- 11 1. Physician, osteopathic physician, medical examiner,
12 chiropractic physician, nurse, paramedic, emergency medical
13 technician, or hospital personnel engaged in the admission,
14 examination, care, or treatment of vulnerable adults;
- 15 2. Health professional or mental health professional other
16 than one listed in subparagraph 1.;
- 17 3. Practitioner who relies solely on spiritual means for
18 healing;
- 19 4. Nursing home staff; assisted living facility staff;
20 adult day care center staff; adult family-care home staff;
21 social worker; or other professional adult care, residential, or
22 institutional staff;
- 23 5. State, county, or municipal criminal justice employee or
24 law enforcement officer;
- 25 6. Employee of the Department of Business and Professional
26 Regulation conducting inspections of public lodging
27 establishments under s. 509.032;
- 28 7. Florida advocacy council or Disability Rights Florida
29 member or a representative of the State Long-Term Care Ombudsman
30 Program; ~~or~~
- 31 8. Bank, savings and loan, or credit union officer,
32 trustee, or employee; or
- 33 9. Dealer, investment adviser, or associated person under
34 chapter 517,
- 35
36 who knows, or has reasonable cause to suspect, that a vulnerable
37 adult has been or is being abused, neglected, or exploited shall
38 immediately report such knowledge or suspicion to the central
39 abuse hotline.



592426

40 Section 2. Section 517.34, Florida Statutes, is created to
41 read:

42 517.34 Protection of specified adults.—

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

44 (a)1. "Exploitation" means:

45 a. With respect to a person who stands in a position of
46 trust and confidence with a specified adult, who knowingly, by
47 deception or intimidation, obtains or uses, or endeavors to
48 obtain or use, the specified adult's funds, assets, or property
49 with the intent to temporarily or permanently deprive the
50 specified adult of the use, benefit, or possession of the funds,
51 assets, or property for the benefit of someone other than the
52 specified adult; or

53 b. With respect to a person who knows or should know that a
54 specified adult lacks the capacity to consent, who obtains or
55 uses, or endeavors to obtain or use, the specified adult's
56 funds, assets, or property with the intent to temporarily or
57 permanently deprive the specified adult of the use, benefit, or
58 possession of the funds, assets, or property for the benefit of
59 someone other than the specified adult.

60 2. "Exploitation" may include, but is not limited to:

61 a. A breach of a fiduciary relationship, such as the misuse
62 of a power of attorney or the abuse of guardianship duties
63 resulting in the unauthorized appropriation, sale, or transfer
64 of property;

65 b. An unauthorized taking of personal assets;

66 c. Misappropriation, misuse, or transfer of moneys
67 belonging to a specified adult from a personal or joint account;
68 or



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69 d. Intentional or negligent failure to effectively use a
70 specified adult's income and assets for the necessities required
71 for that person's support and maintenance.

72 (b) "Law enforcement agency" means an agency or political
73 subdivision of this state or of the United States whose primary
74 responsibility is the prevention and detection of crime or the
75 enforcement of the penal laws of this state or the United States
76 and whose agents and officers are empowered by law to conduct
77 criminal investigations or to make arrests.

78 (c) "Specified adult" means a natural person 65 years of
79 age or older or a vulnerable adult as defined in s. 415.102.

80 (d) "Trusted contact" means a natural person 18 years of
81 age or older whom the account owner has expressly identified in
82 writing as a person who may be contacted about the account.

83 (2) A dealer, investment adviser, or associated person may
84 delay a transaction on, or a disbursement of funds or securities
85 from, an account of a specified adult or an account for which a
86 specified adult is a beneficiary or beneficial owner if the
87 dealer, investment adviser, or associated person reasonably
88 believes that exploitation of the specified adult has occurred,
89 is occurring, has been attempted, or will be attempted in
90 connection with the transaction or disbursement.

91 (a) The dealer's, investment adviser's, or associated
92 person's reasonable belief may be based on the facts and
93 circumstances observed in such dealer's, investment adviser's,
94 or associated person's business relationship with the specified
95 adult.

96 (b)1. A dealer or investment adviser must notify the
97 office, on a quarterly basis and on a form adopted by commission



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98 rule, of every delay he or she places and the outcome of such
99 delay. The notice may not directly or indirectly identify the
100 specified adult or the parties to the transaction or
101 disbursement. The notice must include:

102 a. The name of the firm and dealer, investment adviser, or
103 associated person placing the delay on the transaction or
104 disbursement.

105 b. A general description of the reason why the dealer,
106 investment adviser, or associated person placed the delay on the
107 transaction or disbursement.

108 c. The length of the delay on the transaction or
109 disbursement and whether or not the transaction or disbursement
110 ultimately took place.

111 2. On or before October 1 of each year, the office must
112 submit a report to the Governor, the President of the Senate,
113 and the Speaker of the House of Representatives summarizing the
114 information provided to the office by dealers, investment
115 advisers, and associated persons under subparagraph 1. during
116 the prior fiscal year. This subparagraph expires October 1,
117 2023.

118 (c)1. Within 3 business days after the date on which the
119 delay was first placed, the dealer, investment adviser, or
120 associated person must notify in writing, which may be provided
121 electronically, all parties authorized to transact business on
122 the account and any trusted contact on the account, using the
123 contact information provided for the account, unless the dealer,
124 investment adviser, or associated person reasonably believes
125 that any such party engaged or is engaging in the suspected
126 exploitation of the specified adult.



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127 2. The notice provided pursuant to this paragraph must
128 include, at a minimum, a description of the transaction or
129 disbursement, a statement that a delay was placed on such
130 transaction or disbursement pursuant to this section, the basis
131 for the reasonable belief regarding exploitation of the
132 specified adult, and an explanation of the delay process.

133 (3) A delay on a transaction or disbursement under
134 subsection (2) expires 15 business days after the date on which
135 the delay was first placed. However, a dealer, investment
136 adviser, or associated person may extend the delay for up to 10
137 additional business days if its review of the available facts
138 and circumstances continues to support its reasonable belief
139 that exploitation of the specified adult has occurred, is
140 occurring, has been attempted, or will be attempted. The length
141 of the delay may be shortened or extended at any time by an
142 agency or court of competent jurisdiction. This subsection does
143 not prevent a dealer, investment adviser, or associated person
144 from terminating a delay after communication with the specified
145 adult or trusted contact.

146 (4) A dealer, investment adviser, or associated person may
147 provide access to or copies of any records that are relevant to
148 the suspected exploitation of a specified adult to the
149 Department of Children and Families or a law enforcement agency
150 at their request. The records may include records of prior
151 transactions or disbursements, in addition to the transactions
152 or disbursements comprising the suspected exploitation. A
153 dealer, investment adviser, or associated person subject to the
154 jurisdiction of the office must make available to the office,
155 upon request, all records relating to a delay or report made by



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156 the dealer, investment adviser, or associated person pursuant to
157 this section.

158 (5) Notwithstanding any law to the contrary, the Department
159 of Children and Families may inform the reporting party on the
160 status of an investigation initiated under this section and any
161 final disposition.

162 (6) A dealer, investment adviser, or associated person who
163 delays a transaction or disbursement pursuant to this section,
164 who provides records to an agency of competent jurisdiction
165 pursuant to this section, or who participates in a judicial or
166 arbitration proceeding resulting therefrom is presumed to be
167 acting based upon a reasonable belief and is immune from any
168 civil or administrative liability that otherwise might be
169 incurred or imposed, unless lack of such reasonable belief is
170 shown by clear and convincing evidence. This subsection does not
171 supersede or diminish any immunity in chapter 415.

172 (7) A dealer or investment adviser relying on this section
173 must develop training policies or programs designed to educate
174 associated persons on issues pertaining to exploitation and must
175 conduct training of all associated persons accordingly. The
176 dealer or investment adviser must initially train all of its
177 associated persons by July 1, 2019, must train any newly hired
178 associated persons within 3 months after beginning employment,
179 and must subsequently train all associated persons every 2 years
180 thereafter. The training policies and programs must provide for
181 the associated person to receive a minimum of 1 hour of such
182 training, which must include recognition of indicators of
183 exploitation, the manner in which suspected exploitation must be
184 reported to supervisory personnel and to the appropriate



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185 regulatory and law enforcement agencies, and steps that may be
186 taken to prevent exploitation. The dealer or investment adviser
187 must maintain a written record of compliance with this
188 subsection.

189 (8) This section does not create new rights or obligations
190 of a dealer, investment adviser, or associated person under
191 other applicable laws or rules. In addition, this section does
192 not limit the right of a dealer, investment adviser, or
193 associated person to otherwise refuse or place a delay on a
194 transaction or disbursement under other applicable laws or rules
195 or under an applicable customer agreement.

196 (9) This section does not alter a dealer's, investment
197 adviser's, or associated person's obligation to comply with
198 instructions from a client to close an account or transfer an
199 account to another dealer, investment adviser, or associated
200 person absent a reasonable belief of exploitation as provided in
201 this section.

202 Section 3. This act shall take effect July 1, 2018.

203

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

205 And the title is amended as follows:

206 Delete everything before the enacting clause
207 and insert:

208 A bill to be entitled
209 An act relating to protection for vulnerable
210 investors; amending s. 415.1034, F.S.; requiring
211 securities dealers, investment advisers, and
212 associated persons to immediately report knowledge or
213 suspicion of abuse, neglect, or exploitation of



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214 vulnerable adults to the Department of Children and
215 Families' central abuse hotline; creating s. 517.34,
216 F.S.; defining terms; authorizing dealers, investment
217 advisers, and associated persons to delay certain
218 transactions or disbursements if such persons
219 reasonably believe certain exploitation of a specified
220 adult has occurred, is occurring, has been attempted,
221 or will be attempted; providing the basis for such
222 reasonable belief; requiring a dealer or investment
223 adviser to provide the Office of Financial Regulation
224 a specified notice at certain timeframes; requiring
225 the Financial Services Commission to adopt a form by
226 rule; requiring the office to submit an annual report
227 to the Governor and Legislature; providing for
228 expiration; specifying notification requirements for
229 dealers, investment advisers, and associated persons
230 placing delays on transactions or disbursements;
231 specifying the expiration of such delays; providing
232 that such delays may be extended for a certain
233 timeframe under certain circumstances; providing that
234 such delays may be shortened or extended by an agency
235 or court of competent jurisdiction; providing that
236 delays may be terminated by dealers, investment
237 advisers, or associated persons under certain
238 circumstances; specifying when certain records may or
239 must be shared with certain agencies; authorizing the
240 Department of Children and Families to inform
241 reporting parties on the status of an investigation;
242 providing immunity from civil and administrative



243 liability to dealers, investment advisers, and
244 associated persons for certain actions based on a
245 reasonable belief; specifying requirements for dealers
246 and investment advisers in training their associated
247 persons; providing construction; providing an
248 effective date.

By Senator Stargel

22-00777B-18

2018662__

1 A bill to be entitled
 2 An act relating to protection for vulnerable
 3 investors; creating s. 517.34, F.S.; defining terms;
 4 authorizing securities dealers, investment advisers,
 5 and associated persons to place temporary holds on
 6 transactions regarding certain accounts if the dealer,
 7 investment adviser, or associated person believes in
 8 good faith that exploitation of specified adults has
 9 occurred, is occurring, or has been attempted in
 10 connection with the transactions and if the dealer,
 11 investment adviser, or associated person complies with
 12 specified requirements; providing that such holds
 13 expire after a specified timeframe; authorizing
 14 dealers, investment advisers, and associated persons
 15 to extend holds under certain circumstances for up to
 16 a specified timeframe; providing that the length of
 17 holds may be shortened or extended by certain courts
 18 or agencies; authorizing dealers, investment advisers,
 19 and associated persons to provide certain records to
 20 the Department of Children and Families or law
 21 enforcement agencies upon request; authorizing the
 22 department to inform reporting parties of certain
 23 information; providing that dealers, investment
 24 advisers, and associated persons are immune from
 25 liability for certain actions; providing construction;
 26 providing an effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 4

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

22-00777B-18

2018662__

30 Section 1. Section 517.34, Florida Statutes, is created to
 31 read:
 32 517.34 Protection of specified adults.—
 33 (1) As used in this section, the term:
 34 (a) "Exploitation" has the same meaning as provided in s.
 35 415.102.
 36 (b) "Law enforcement agency" means an agency of this state
 37 or a political subdivision of this state or of the United States
 38 whose primary responsibility is the prevention and detection of
 39 crime or the enforcement of the penal laws of this state or the
 40 United States, and whose agents and officers are empowered by
 41 law to conduct criminal investigations or to make arrests.
 42 (c) "Records" has the same meaning as provided in s.
 43 415.102.
 44 (d) "Specified adult" means a natural person who is 65
 45 years of age or older or a vulnerable adult as defined in s.
 46 415.102.
 47 (2) A dealer, an investment adviser, or an associated
 48 person may place a temporary hold on a transaction regarding the
 49 account of a specified adult or an account for which a specified
 50 adult is a beneficiary or beneficial owner if the dealer,
 51 investment adviser, or associated person believes in good faith
 52 that exploitation of the specified adult has occurred, is
 53 occurring, or has been attempted in connection with the
 54 transaction, as follows:
 55 (a) Consistent with the requirements of chapter 415, the
 56 dealer, investment adviser, or associated person must
 57 immediately notify the Department of Children and Families, via
 58 its central abuse hotline, of the suspected exploitation.

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

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59 (b) Within 3 business days after placing a temporary hold
 60 on a transaction, the dealer, investment adviser, or associated
 61 person must orally or in writing attempt to notify all parties
 62 authorized to transact business on the account using the contact
 63 information provided for the account, unless the dealer,
 64 investment adviser, or associated person believes in good faith
 65 that any such party engaged or is engaging in the suspected
 66 exploitation of the specified adult.

67 (3) A temporary hold under subsection (2) expires 15
 68 business days after the date on which the hold was placed.
 69 However, the dealer, investment adviser, or associated person
 70 may extend the hold for up to 10 additional business days if its
 71 review of the available facts and circumstances continues to
 72 support its good faith belief that exploitation of the specified
 73 adult has occurred, is occurring, or has been attempted. The
 74 length of the hold may be shortened or extended at any time by
 75 an order of a court of competent jurisdiction or by a written
 76 directive from an agency of competent jurisdiction that directs
 77 such reduction or extension, including, but not limited to, the
 78 Department of Children and Families pursuant to its authority
 79 under chapter 415.

80 (4) A dealer, an investment adviser, or an associated
 81 person may provide access to or copies of any records that are
 82 relevant to the suspected exploitation of a specified adult to
 83 the Department of Children and Families or a law enforcement
 84 agency at their request. These records may include records of
 85 prior transactions in addition to the transactions comprising
 86 the suspected exploitation.

87 (5) Notwithstanding any law to the contrary, the Department

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

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2018662__

88 of Children and Families may inform the reporting party on the
 89 status of an investigation initiated under this section and any
 90 final disposition.

91 (6) Notwithstanding any law to the contrary, a dealer, an
 92 investment adviser, or an associated person is immune from any
 93 civil, criminal, or administrative liability for actions taken
 94 in accordance with this section. This section may not be
 95 construed to form a basis for any civil, criminal, or
 96 administrative liability against a dealer, an investment
 97 adviser, or an associated person.

98 (7) This section may not be construed to create new rights
 99 or obligations of a dealer, an investment adviser, or an
 100 associated person under other applicable laws or rules. In
 101 addition, this section does not limit the right of a dealer, an
 102 investment adviser, or an associated person to otherwise refuse
 103 or place a hold on a transaction under other applicable laws or
 104 rules or under an applicable customer agreement.

105 Section 2. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18 Meeting Date

662 Bill Number (if applicable)

Topic Request to Speak on SB 662

Amendment Barcode (if applicable)

Name Jamie Mongiovi (MON-JOE-VEE)

Job Title Director, Communications & Govt. Relations

Address FL Office of Financial Regulation

Phone 850-559-7003

Tallahassee FL 32399

Email jamie.mongiovi@fiofr.com

Speaking: For Against Information

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

Representing Florida Office of Financial Regulation

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)

Meeting Date

Bill Number (if applicable)

642

592426

Amendment Barcode (if applicable)

Topic Protection for Vulnerable Investors

Name Eddie Thompson

Job Title Dir of State Affairs

Address Street

Phone 321-720-7095

Email

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Alzheimer's Association

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/20/2018

662

Meeting Date

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-900

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Securities Industry and Financial Markets Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-20-2018

Meeting Date

662

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Katie Crofoot

Job Title Asst. VP of Gov't Affairs

Address 1001 Thomasville Rd

Phone 850.224.2265

Street

Tallahassee FL 32303

City

State

Zip

Email kcrofoot@floridabankers.com

Speaking: [] For [] Against [] Information

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

Representing Florida Bankers Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

662

Bill Number (if applicable)

592426

Amendment Barcode (if applicable)

Meeting Date

Topic Vulnerable Investors

Name Sean Stafford

Job Title _____

Address _____
Street

Phone 727-5000

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Securities Dealers Assn / Financial Services Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Military and Veterans Affairs, Space, and Domestic Security

SENATOR KELLI STARGEL

Deputy Majority Leader
22nd District

February 8, 2018

The Honorable Bill Montford
Senate Committee on Commerce and Tourism, Chair
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Montford:

I respectfully request that SB 662, related to *Protection for Vulnerable Investors*, be placed on the Committee on the Commerce and Tourism meeting 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 black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Todd McKay/Staff Director
Gabriela Denton/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

11:33:13 AM Senator Taddeo Waives Close on Amendment on 442132
11:33:22 AM Amendment 442132 is Adopted
11:33:27 AM Amendment 388322
11:33:31 AM Amendment 388322 Explained by Taddeo
11:34:21 AM Senator Taddeo Waives Close on Amendment 388322
11:34:30 AM Amendment 388322 is Adopted
11:35:17 AM Senator Taddeo Waives Close on SB 1604
11:35:21 AM Roll Call
11:35:37 AM SB 1604 is Reported Favorably
11:35:48 AM Senator Gibson Introduction
11:37:27 AM Tab 4 SB 662
11:37:39 AM SB 662 Explained by Senator Stargel
11:38:06 AM Amendment 592426
11:38:11 AM Amendment 592426 Explained by Senator Stargel
11:38:47 AM Sean Stafford rep. FL Securities Dealers Assoc./Financial Services Institute Waives in Support
11:38:59 AM Eddie Thompson rep. Alzheimer's Association Waives in Support
11:39:15 AM Senator Stargel Waives Close on Amendment 592426
11:39:21 AM Amendment 592426 is Adopted
11:39:50 AM Jamie Mongiovi rep. Florida Office of Financial Regulation Providing Information
11:40:54 AM Katie Crofoot rep. Florida Bankers Association Waives support
11:41:04 AM Warren Husband rep. Securities Industry and Financial Markets Assoc. Speaks in Support
11:41:46 AM Senator Stargel Closes on SB 662
11:42:01 AM Roll Call
11:42:17 AM SB 662 is Reported Favorably
11:42:26 AM Meeting Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Pre-K - 12
Education
Health Policy
Rules

SENATOR BILL MONTFORD

3rd District

February 19, 2018

The Honorable President Negron
404 S. Monroe Street
Tallahassee, FL 32399-1100

President Negron:

This is a formal request that I be excused from tomorrow's Commerce and Tourism Committee meeting and from any votes on committee matters taken during my absence.

Your indulgence is greatly appreciated.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bill Montford".

Bill Montford, State Senator
District Three

REPLY TO:

- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100
- 105 North Jefferson Street, Perry, Florida 32347 (850) 223-0902

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



The Florida Senate

Committee Excusal Request

To: Senator Bill Montford, Chair
Committee on Commerce and Tourism

Subject: Committee Excusal Request

Date: February 20, 2018

I respectfully request to be excused from the Committee on Commerce and Tourism meeting on 2/20/18, as I will be presenting HB 7055 in the Committee on Education at the same time. Please feel free to reach out to my office if you have any questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28